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# FEDERAL REGISTER

Vol. 79 Friday,
No. 45 March 7, 2014

Pages 12923–13188

OFFICE OF THE FEDERAL REGISTER

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# Presidential Documents

**Title 3—**

## The President

**Memorandum of February 27, 2014**

## Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color

**Memorandum for the Heads of Executive Departments and Agencies**

Over the course of my Administration, we have made consistent progress on important goals such as reducing high school dropout rates and lowering unemployment and crime. Yet as the Congress, State and local governments, research institutions, and leading private-sector organizations have all recognized, persistent gaps in employment, educational outcomes, and career skills remain for many boys and young men of color throughout their lives.

Many boys and young men of color will arrive at kindergarten less prepared than their peers in early language and literacy skills, leaving them less likely to finish school. Labor-force participation rates for young men of color have dropped, and far too many lack the skills they need to succeed. The disproportionate number of African American and Hispanic young men who are unemployed or involved in the criminal justice system undermines family and community stability and is a drag on State and Federal budgets. And, young men of color are far more likely to be victims of murder than their white peers, accounting for almost half of the country's murder victims each year. These outcomes are troubling, and they represent only a portion of the social and economic cost to our Nation when the full potential of so many boys and young men is left unrealized.

By focusing on the critical challenges, risk factors, and opportunities for boys and young men of color at key life stages, we can improve their long-term outcomes and ability to contribute to the Nation's competiveness, economic mobility and growth, and civil society. Unlocking their full potential will benefit not only them, but all Americans.

Therefore, I am establishing the My Brother's Keeper initiative, an interagency effort to improve measurably the expected educational and life outcomes for and address the persistent opportunity gaps faced by boys and young men of color. The initiative will help us determine the public and private efforts that are working and how to expand upon them, how the Federal Government's own policies and programs can better support these efforts, and how to better involve State and local officials, the private sector, and the philanthropic community.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

**Section 1.** *My Brother's Keeper Task Force.* (a) There is established a My Brother's Keeper Task Force (Task Force) to develop a coordinated Federal effort to improve significantly the expected life outcomes for boys and young men of color (including African Americans, Hispanic Americans, and Native Americans) and their contributions to U.S. prosperity. The Task Force shall be chaired by the Assistant to the President and Cabinet Secretary. In addition to the Chair, the Task Force shall consist of the following members:

(i) the Attorney General;

(ii) the Secretary of Agriculture;

(iii) the Secretary of Commerce;

(iv) the Secretary of Defense;

(v) the Secretary of Education;

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Housing and Urban Development;

(viii) the Secretary of the Interior;

(ix) the Secretary of Labor;

(x) the Secretary of Transportation;

(xi) the Director of the Office of Management and Budget;

(xii) the Chair of the Council of Economic Advisers;

(xiii) the Director of the Office of Personnel Management;

(xiv) the Administrator of the Small Business Administration;

(xv) the Chief Executive Officer of the Corporation for National and Community Service;

(xvi) the Assistant to the President for Intergovernmental Affairs and Public Engagement;

(xvii) the Director of the Domestic Policy Council;

(xviii) the Director of the Office of Science and Technology Policy;

(xix) the Director of the National Economic Council; and

(xx) the heads of such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Task Force may designate a senior-level official who is from the member's department, agency, or office, and is a full-time officer or employee of the Federal Government, to perform the day-to-day Task Force functions of the member. At the direction of the Chair, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this subsection, as appropriate.

(c) The Deputy Secretary of Education shall serve as Executive Director of the Task Force, determine its agenda, convene regular meetings of the Task Force, and supervise its work under the direction of the Chair. The Department of Education shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations. Each executive department or agency shall bear its own expenses for participating in the Task Force.

**Sec. 2.** *Mission and Function of the Task Force.* (a) The Task Force shall, consistent with applicable law, work across executive departments and agencies to:

(i) develop a comprehensive public Web site, to be maintained by the Department of Education, that will assess, on an ongoing basis, critical indicators of life outcomes for boys and young men of color (and other ethnic, income, and relevant subgroups) in absolute and relative terms;

(ii) assess the impact of Federal policies, regulations, and programs of general applicability on boys and young men of color, so as to develop proposals that will enhance positive outcomes and eliminate or reduce negative ones;

(iii) create an Administration-wide, online public portal to identify and disseminate successful programs and practices that improve outcomes for boys and young men of color;

(iv) recommend, where appropriate, incentives for the broad adoption by national, State, and local public and private decisionmakers of effective and innovative strategies and practices for providing opportunities to and improving outcomes for boys and young men of color;

(v) consistent with applicable privacy laws and regulations, provide relevant Federal data assets and expertise to public and private efforts to

increase opportunities and improve life outcomes for boys and young men of color, and explore ways to coordinate with State and local governments and non-governmental actors with useful data and expertise;

(vi) ensure coordination with other Federal interagency groups and relevant public-private initiatives;

(vii) work with external stakeholders to highlight the opportunities, challenges, and efforts affecting boys and young men of color; and

(viii) recommend to the President means of ensuring sustained efforts within the Federal Government and continued partnership with the private sector and philanthropic community as set forth in this memorandum.

(b) The Task Force shall focus on evidence-based intervention points and issues facing boys and young men of color up to the age of 25, with a particular focus on issues important to young men under the age of 15. Specifically, the Task Force shall focus on the following issues, among others: access to early childhood supports; grade school literacy; pathways to college and a career, including issues arising from school disciplinary action; access to mentoring services and support networks; and interactions with the criminal justice system and violent crime.

(c) Within 30 days of the date of this memorandum, each member of the Task Force shall provide recommended indicators of life outcomes for the public Web site described in subsection (a)(i) of this section, and a plan for providing data on such indicators.

(d) Within 45 days of the date of this memorandum, each member of the Task Force shall identify any relevant programs and data-driven assessments within the member's department or agency for consideration in the portal described in subsection (a)(iii) of this section.

(e) Within 90 days of the date of this memorandum, the Task Force shall provide the President with a report on its progress and recommendations with respect to the functions set forth in subsection (a) of this section. Additionally, the Task Force shall provide, within 1 year of the date of this memorandum, a status report to the President regarding the implementation of this memorandum.

**Sec. 3.** *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Education is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
*Washington, February 27, 2014*

[FR Doc. 2014–05073
Filed 3–6–14; 8:45 am]
Billing code 4000–01

# Presidential Documents

**Proclamation 9083 of February 28, 2014**

## American Red Cross Month, 2014

**By the President of the United States of America**

**A Proclamation**

On the bloodied battlefields of the Civil War, Clara Barton risked her life to aid the wounded, raise spirits, and deliver dearly needed medical supplies. She went on to found the American Red Cross in 1881, which would carry forward her legacy of compassion. Since then, service and relief organizations have demonstrated time and time again that amid the greatest hardship, all of us can unite in shared commitment to helping our fellow human beings. During American Red Cross Month, we honor those who devote themselves to bringing relief where there is suffering, inspiring hope where there is despair, and healing the wounds of disaster and war.

Today, American Red Cross workers, alongside countless humanitarian organizations and caring volunteers, deliver life-saving assistance in every corner of our Nation and all across the globe. They help us donate blood to the ill and injured, fortify towns against rising flood waters, teach us first aid, and rebuild communities in the wake of terrible disasters. Last year, we saw this compassion once again when a tornado tore through Oklahoma, leaving homes destroyed and schools in rubble. Americans came together as one people and one family, determined to stand with those affected every step of the way and to emerge from this tragedy stronger than ever before.

During the darkness of storm, we see what is brightest in America—the drive to shield our neighbors from danger, to roll up our sleeves in times of crisis, to respond as one Nation and leave no one behind. This month, as we honor our incredible relief and service organizations, let us also celebrate that uniquely American spirit that calls us, across all lines of background and belief, to set aside smaller differences in service of a greater purpose.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2014 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and by supporting the work of service and relief organizations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05074
Filed 3–6–14; 8:45 am]
Billing code 3295–F4

# Presidential Documents

**Proclamation 9084 of February 28, 2014**

## Irish-American Heritage Month, 2014

**By the President of the United States of America**

**A Proclamation**

Centuries after America welcomed the first sons and daughters of the Emerald Isle to our shores, Irish heritage continues to enrich our Nation. This month, we reflect on proud traditions handed down through the generations, and we celebrate the many threads of green woven into the red, white, and blue.

Irish Americans have defended our country through times of war, strengthened communities from coast to coast, and poured sweat and blood into building our infrastructure and raising our skyscrapers. Some endured hunger, hardship, and prejudice; many rose to be leaders of government, industry, or culture. Their journey is a testament to the resilience of the Irish character, a people who never stopped dreaming of a brighter future and never stopped striving to make that dream a reality. Today, Americans of all backgrounds can find common ground in the values of faith and perseverance, and we can all draw strength from the unshakable belief that through hard work and sacrifice, we can forge better lives for ourselves and our families.

The American and Irish peoples enjoy a friendship deepened by both shared heritage and shared ideals. On the international stage, we are proud to work in concert toward a freer, more just world. As we honor that enduring connection during Irish-American Heritage Month, let us look forward to many more generations of partnership. May the bond between our peoples only grow in the centuries to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2014 as Irish-American Heritage Month. I call upon all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05075
Filed 3–6–14; 8:45 am]
Billing code 3295–F4

# Presidential Documents

**Proclamation 9085 of February 28, 2014**

## National Colorectal Cancer Awareness Month, 2014

**By the President of the United States of America**

**A Proclamation**

The second leading cause of cancer deaths in the United States, colorectal cancer claims more than 50,000 American lives each year. Because the odds of survival rise dramatically when this cancer is caught early, calling attention to it can save lives. During National Colorectal Cancer Awareness Month, we aim to improve public understanding of risk factors and screening recommendations, reach for better treatments, and set our sights on a cure.

While anyone can get colorectal cancer, the risk increases with age. Nine out of ten cases occur in people over 50 years old, and the likelihood is also greater for people of African-American or Eastern European descent and those with inflammatory bowel disease or a family history of colorectal cancer. Symptoms can include stomach pain, aches, or cramps that do not go away and weight loss without a known cause. Yet many cases have no symptoms, especially early on, when it can be prevented or more effectively treated. That is why it is crucial for people of all ages to discuss colorectal cancer with their doctors and those at risk or between ages 50 and 75 to get regular screenings.

My Administration is funding research to improve prevention and treatment, and to identify the best ways to promote colorectal cancer screening. We are also working to ensure screenings and treatment are available and affordable for all. The Centers for Disease Control and Prevention funds programs that provide these tests to underserved, at-risk Americans. And under the Affordable Care Act, most health insurance plans cover recommended preventive services, including colorectal cancer screening for adults ages 50 to 75, at no out-of-pocket cost to the patient. Thanks to the health care law, insurance companies can no longer put annual or lifetime dollar caps on essential health benefits or discriminate against people with pre-existing conditions. Americans have their first chance to sign up for affordable, high quality coverage in the Health Insurance Marketplace through open enrollment until March 31st, and annually going forward.

Everyone has a role to play in reducing deaths from colorectal cancer. This month, I encourage Americans to talk to at-risk parents, grandparents, or friends of all ages about getting screened. If we look out for one another, we can better the chances of survival and keep more families whole.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2014 as National Colorectal Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, non-profit organizations, and other groups to join in activities that will increase awareness and prevention of colorectal cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05076
Filed 3–6–14; 8:45 am]
Billing code 3295–F4

# Presidential Documents

**Proclamation 9086 of February 28, 2014**

## National Consumer Protection Week, 2014

**By the President of the United States of America**

**A Proclamation**

The premise that we are all created equal is the opening line in the American story, and while we do not promise equal outcomes, we have always strived to deliver equal opportunity. When everyone gets a fair shot, does their fair share, and plays by the same set of rules, the best ideas rise to the top and our economy thrives. After 6 years of digging out of a historic crisis brought on by widespread abuses in our financial system, it is clearer than ever that we cannot succeed without strong consumer protections. This week, we remember that our Nation's economy is only as strong as its people, and we recommit to fostering a sense of basic fairness in our marketplace.

Since I took office, my Administration has worked tirelessly to expose deceptive mortgage schemes, crack down on abusive debt collection practices, and ensure an irresponsible few cannot hurt consumers by illegally rigging markets for their own gain. We have taken action to prevent credit card companies from hiding fees in intentionally obscure text and given families access to clear, comprehensive information on student loans. We passed the strongest consumer financial protection law in history and created an independent watchdog charged with looking out for the American people in the financial world. And to introduce more choice for those planning for retirement, I launched the myRA program, a new type of savings bond that lets Americans keep the same account, even if they change jobs.

It is also critical that all Americans know their rights and have the tools to weigh the risks and potential benefits of their choices in the open market. In partnership with consumer advocates, my Administration launched www.NCPW.gov, which provides advice on everything from avoiding scams, protecting identities, and staying informed about product recalls to managing debt and making sound financial decisions.

During National Consumer Protection Week, let us recognize the men and women who power the engine of prosperity. Together, let us build an economy that works for everyone, leaves no one behind, and allows every American to pursue their own measure of happiness.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2 through March 8, 2014, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05079
Filed 3–6–14; 8:45 am]
Billing code 3295–F4

# Presidential Documents

**Proclamation 9087 of February 28, 2014**

## Read Across America Day, 2014

**By the President of the United States of America**

**A Proclamation**

Literacy is the foundation of every child's education. It opens doorways to opportunity, transports us across time and space, and binds family and friends closer together. When parents, educators, librarians, and mentors read with children, they give a gift that will nourish souls for a lifetime. Today, Americans young and old will take time to get lost in a story and do their part to cultivate the next generation of talent and intellect.

This day is also a time to honor the legacy of Theodor Seuss Geisel, known to us as Dr. Seuss. Countless Americans can recall his books as their first step into the lands of letters and wordplay. With creatures, contraptions, and vibrant characters, they have led generations of happy travelers through voyages of the imagination. Yet his tales also challenge dictators and discrimination. They call us to open our minds, to take responsibility for ourselves and our planet. And they remind us that the value of our possessions pales in comparison to that of the ties we share with family, friends, and community.

From children's stories to classic works of literature, the written word allows us to see the world from new perspectives. It helps us understand what it means to be human and what it means to be American. During Read Across America Day, let us celebrate, rediscover, and engage our children in this wonderful pastime.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 3, 2014, as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05080
Filed 3–6–14; 8:45 am]
Billing code 3295–F4

# Rules and Regulations

Federal Register
Vol. 79, No. 45
Friday, March 7, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 11

**[Docket No. FAA–2008–0677; Amdt. No. 11–56]**

**RIN 2120–AJ00**

## Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** On November 12, 2013, the FAA published a final rule entitled ''Qualification, Service and Use of Crewmembers and Aircraft Dispatchers'' which will result in new information collection requirements. This technical amendment updates the FAA's list of OMB control numbers to display the control number associated with the approved information collection activities in the ''Qualification, Service and Use of Crewmembers and Aircraft Dispatchers'' final rule.

**DATES:** Effective March 12, 2014.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Nancy Lauck Claussen, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–9991; email: *nancy.l.claussen@faa.gov.* For legal questions concerning this action, contact Sara Mikolop, Office of the Chief Counsel—International Law, Legislation, and Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *sara.mikolop@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On November 12, 2013, the FAA published a final rule entitled ''Qualification, Service and Use of Crewmembers and Aircraft Dispatchers'' (78 FR 67800). This final rule revises the training requirements for pilots in air carrier operations. The regulations enhance air carrier pilot training programs by emphasizing the development of pilots' manual handling skills and adding safety-critical tasks such as recovery from stall and upset. The final rule also requires enhanced runway safety training and pilot monitoring training to be incorporated into existing requirements for scenario-based flight training and requires air carriers to implement remedial training programs for pilots. The FAA expects these changes to contribute to a reduction in aviation accidents. Additionally, the final rule revises recordkeeping requirements for communications between the flightcrew and dispatch; ensures that personnel identified as flight attendants have completed flight attendant training and qualification requirements; provides civil enforcement authority for making fraudulent statements; and, provides a number of conforming and technical changes to existing air carrier crewmember training and qualification requirements. The final rule also includes provisions that provide opportunities for air carriers to modify training program requirements for flightcrew members when the air carrier operates multiple aircraft types with similar design and flight handling characteristics.

This final rule will result in new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these information collection amendments to OMB for its review.

On January 9, 2014, OMB approved the information collection request. The OMB control number is 2120–0739.

### Technical Amendment

The FAA lists OMB control numbers assigned to its information collection activities in 14 CFR 11.201(b). Accordingly, this technical amendment updates 14 CFR 11.201(b) to display OMB control number 2120–0739 associated with the information collection activities in the final rule, Qualification, Service and Use of Crewmembers and Aircraft Dispatchers. *See* 78 FR 67800.

Because this amendment is technical in nature and results in no substantive change, the FAA finds that the notice and public procedures under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

### The Amendment

In consideration of the foregoing the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

## PART 11—GENERAL RULEMAKING PROCEDURES

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

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

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

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

* * * * *

(b) * * *

| 14 CFR part or section identified and described | Current OMB control number |
|---|---|
| * * * * * * * | |
| Part 121 | 2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653, 2120–0691, 2120–0702, 2120–0739 |
| * * * * * * * | |

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f) and 44701(a) on February 28, 2014.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2014–04902 Filed 3–6–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

**[Docket No. DEA–386]**

### Schedules of Controlled Substances: Temporary Placement of 10 Synthetic Cathinones Into Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final order.

**SUMMARY:** The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final order to temporarily schedule 10 synthetic cathinones into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act (CSA). The 10 substances are: 4-methyl-*N*-ethylcathinone (''4-MEC''); 4-methyl-*alpha*-pyrrolidinopropiophenone (''4-MePPP''); alpha-pyrrolidinopentiophenone (''α-PVP''); 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (''butylone''); 2-(methylamino)-1-phenylpentan-1-one (''pentedrone''); 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (''pentylone''); 4-fluoro-*N*-methylcathinone (''4–FMC''); 3-fluoro-*N*-methylcathinone (''3–FMC''); 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (''naphyrone''); and alpha-pyrrolidinobutiophenone (''α-PBP''). This action is based on a finding by the Deputy Administrator that the placement of these synthetic cathinones and their optical, positional, and geometric isomers, salts and salts of isomers into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities, and possess), or propose to handle these synthetic cathinones.

**DATES:** This final order is effective March 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ruth A. Carter, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone (202) 598–6812.

**SUPPLEMENTARY INFORMATION:**

### 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, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose 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 into 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 initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the DEA, who in turn has delegated her authority to the Deputy Administrator of the DEA. 28 CFR 0.100, Appendix to Subpart R of Part 0, Sec. 12.

### Background

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The Deputy Administrator transmitted notice of his intent to place 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP into schedule I on a temporary basis to

[1] Because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this Final Order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.'' As set forth in a memorandum of understanding entered into by HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Assistant Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985.

the Assistant Secretary by letter dated November 7, 2013. The Assistant Secretary responded to this notice by letter dated December 4, 2013, and advised that based on review by the FDA, there are currently no investigational new drug applications or approved new drug applications for 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP into schedule I of the CSA.

The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). As 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP are not currently listed in any schedule under the CSA, and as no exemptions or approvals are in effect for 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP under section 505 of the FDCA, 21 U.S.C. 355, the conditions of 21 U.S.C. 811(h)(1) have been satisfied. As required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule these 10 synthetic cathinones was published in the **Federal Register** on January 28, 2014. 79 FR 4429.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP indicate that these 10 synthetic cathinones have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

**Synthetic Cathinones**

Synthetic cathinones are β-keto-phenethylamine derivatives of the larger phenethylamine structural class (amphetamines, cathinones, 2C compounds, aminoindanes, etc.). Synthetic cathinones share a core phenethylamine structure with substitutions at the β-position, α-position, phenyl ring, or nitrogen atom. The addition of a beta-keto (β-keto) substituent (i.e., carbonyl (C=O)) to the phenethylamine core structure along with substitutions on the alpha (α) carbon (C) atom or the nitrogen (N) atom produce a variety of substances called cathinones or synthetic cathinones. Many synthetic cathinones produce pharmacological effects substantially similar to the schedule I substances cathinone, methcathinone, and 3,4-methylenedioxymethamphetamine (MDMA) and schedule II stimulants amphetamine, methamphetamine, and cocaine. 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP are synthetic cathinones and are structurally and pharmacologically similar to amphetamine, MDMA, cathinone, and other related substances. Accordingly, these synthetic cathinone substances share substantial similarities with schedule I and schedule II substances with respect to desired and adverse effects. In general, desired effects reported by abusers of synthetic cathinone substances include euphoria, sense of well-being, increased sociability, energy, empathy, increased alertness, and improved concentration and focus. Abusers also report experiencing unwanted effects such as tremor, vomiting, agitation, sweating, fever, and chest pain. Other adverse or toxic effects that have been reported with the abuse of synthetic cathinones include tachycardia, hypertension, hyperthermia, mydriasis, rhabdomyolysis, hyponatremia, seizures, altered mental status (paranoia, hallucinations, delusions), and even death. These synthetic cathinone substances have no known medical use in the United States but evidence demonstrates that these substances are being abused by individuals. There have been documented reports of emergency room admissions and deaths associated with the abuse of synthetic cathinone substances.

Products that contain synthetic cathinones have been falsely marketed as ''research chemicals,'' ''jewelry cleaner,'' ''stain remover,'' ''plant food or fertilizer,'' ''insect repellants,'' or ''bath salts.'' These products are sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations and can also be purchased on the Internet. These substances are commonly encountered in the form of powders, crystals, resins, tablets, and capsules.

From January 2010 through December 2013, according to the System to Retrieve Information from Drug Evidence [2] (STRIDE) data, there are 377 exhibits for 4-MEC; 125 exhibits for 4-MePPP; 689 exhibits for α-PVP; 75 exhibits for butylone; 304 exhibits for pentedrone; 121 exhibits for pentylone; 37 exhibits for FMC [3]; 24 exhibits for naphyrone; and 37 exhibits for α-PBP. From January 2010 through December 2013, the National Forensic Laboratory Information System [4] (NFLIS) registered 9,113 reports containing these synthetic cathinones (4-MEC—1,952 reports; 4-MePPP—289 reports; α-PVP—4,536 reports; butylone—495 reports; pentedrone—1,167 reports; pentylone—238 reports; FMC [5]—292 reports; naphyrone—44 reports; α-PBP—100 reports) across 42 States.

**Factor 4. History and Current Pattern of Abuse**

4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP are synthetic cathinones that emerged on the United States' illicit drug market around the time of the temporary scheduling of mephedrone, MDPV, and methylone on October 21, 2011. 76 FR 65371. Mephedrone and MDPV were permanently placed in schedule I on July 9, 2012, by the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), and methylone was permanently placed in schedule I by the DEA on April 12, 2013 (78 FR 21818). These synthetic cathinone substances, like the schedule I synthetic cathinones (mephedrone, methylone, and MDPV), are promoted as being a ''legal'' alternative to cocaine, methamphetamine, and MDMA. Products that contain 4-MEC, 4-MePPP,

[2] STRIDE is a database of drug exhibits sent to the DEA laboratories for analysis. Exhibits from the database are from the DEA, other Federal agencies, and some local law enforcement agencies. STRIDE data was queried on 2/5/2014 by date submitted to Federal forensic laboratories.

[3] FMC refers to both 3-FMC and 4-FMC.

[4] NFLIS is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories across the country. NFLIS State and local forensic drug reports were queried on 2/6/2014.

[5] FMC refers to both 3-FMC and 4-FMC.

α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP are falsely marketed as ''research chemicals,'' ''jewelry cleaner,'' ''stain remover,'' ''plant food or fertilizer,'' ''insect repellants,'' or ''bath salts.'' They are sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations, and can also be purchased on the Internet under a variety of product names (e.g., ''White Dove,'' ''Explosion,'' and ''Tranquility''). They are commonly encountered in the form of powders, crystals, resins, tablets, and capsules. The packages of these commercial products usually contain the warning ''not for human consumption.''

Information from published scientific studies indicates that the most common routes of administration for synthetic cathinone substances is ingestion by swallowing capsules or tablets or nasal insufflation by snorting the powder. Other methods of intake include intravenous or intramuscular injection, rectal administration, and swallowing via ingestion by ''bombing'' (wrapping a dose of powder in paper).

There is evidence that these synthetic cathinone substances are abused alone or ingested with other substances including other synthetic cathinones, pharmaceutical agents, or other recreational substances. Substances found in combination with 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, or naphyrone are: Other synthetic cathinones (e.g., methylone and MDPV), common cutting agents (e.g., lidocaine, caffeine, lignocaine, ephedrine, etc.), or other recreational substances (e.g., cocaine, methamphetamine, and amphetamine).

Evidence from poison centers and published reports suggest that the primary users of synthetic cathinones are youths and young adults. Synthetic cathinone exposures reported to the Texas Poison Center Network during 2010 and 2011 involved mostly adolescents (12 to 19-years-old) and young adults (mean age was 30-years-old). A survey of college students reported that the lifetime use (used at least once) of synthetic cathinones among college students (at a large Southeastern United States university) is 25 out of 2,349 students surveyed. A national survey on drug use by the Monitoring the Future (MTF) [6] research program showed that 0.2% of full-time college students (one to four years past high school) used synthetic cathinone substances in 2012. Similarly, the use of synthetic cathinone substances among 8th, 10th, and 12th grade students, and young adults (non-college peers aged 19 to 28-years-old) was 0.8%, 0.6%, 1.3%, and 0.8%, respectively.

**Factor 5. Scope, Duration and Significance of Abuse**

4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP, like the schedule I cathinones mephedrone, methylone, and MDPV, are popular recreational drugs. Evidence that these synthetic cathinone substances are being abused is indicated by law enforcement encounters of these substances. Forensic laboratories have analyzed drug exhibits received from State, local, and Federal law enforcement agencies and confirmed the presence of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP in these exhibits.

STRIDE registered 1,789 drug exhibits pertaining to the trafficking, distribution and abuse of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP from January 2010 to December 2013.[7] Specifically, in 2010, STRIDE contains four reports related to 4-MEC and none for the other nine substances. However, in 2011, there were 216 reports related to these 10 substances, and in 2012, there were 1,314 reports. In 2013, there were 255 reports.

NFLIS registered over 9,000 reports from State and local forensic laboratories identifying these substances in drug-related exhibits for the period from January 2010 to December 2013, across 42 States. Specifically, in 2010, NFLIS registered 13 reports from 5 States containing many of these synthetic cathinone substances.[8] In 2011, there were 800 reports from 32 States related to these substances registered in NFLIS, in 2012 there were 5,519 reports from 41 States, and in 2013 there were 2,781 reports from 42 States.

Additionally, large seizures of these substances have occurred by the United States Customs and Border Protection (CBP). At selected United States ports of entry, CBP encountered several shipments of products from April 2010 to November 2013 containing these synthetic cathinone substances (4-MEC—78 encounters; 4-MePPP—8 encounters; α-PVP—40 encounters; butylone—21 encounters; pentedrone—18 encounters; pentylone—10 encounters; FMC [9]—13 encounters; naphyrone—3 encounters; α-PBP—11 encounters), thus indicating the appeal of these substances. Most of the shipments of these synthetic cathinones originated overseas and were destined for delivery throughout the United States to States including Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Illinois, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Oregon, Texas, Virginia, Washington, and Wyoming.

Concerns over the abuse of these synthetic cathinone substances have prompted many States to regulate them. As of June 24, 2013, more than half of the States in the United States have emergency scheduled or enacted legislation placing regulatory controls on some or many of the 10 synthetic cathinones that are the subject of this final order. In addition, due to the use of synthetic cathinones by service members, the United States Armed Forces has prohibited the use of synthetic cathinones for intoxication purposes.

**Factor 6. What, If Any, Risk There Is to the Public Health**

Available evidence on the overall public health risks associated with the use of synthetic cathinones indicates that 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP can cause acute health problems leading to emergency department admissions, violent behaviors causing harm to self or others, or death. For example, individuals have presented at emergency departments following exposure to some of these synthetic cathinone substances or products containing them. In addition, products containing these synthetic cathinone substances often do not bear labeling information regarding their ingredients and, if they do, they may not list the active synthetic ingredients or identify the health risks and potential hazards associated with these products. Acute effects of these substances are those typical of sympathomimetic agents (e.g., cocaine, methamphetamine, and amphetamine) and include, among other effects, tachycardia, headache, bruxism (teeth grinding), palpitations, agitation, anxiety, insomnia, mydriasis, tremor, fever or sweating, and hypertension. Other effects, with public health risk implications, that have been reported from the use of synthetic

[6] MTF is a research program conducted by the University of Michigan's Institute for Social Research under grants from NIDA. MTF tracks drug use trends among American adolescents in the 8th, 10th, and 12th grades and high school graduates into adulthood by conducting nationwide surveys.

[7] STRIDE data was queried on 2/5/2014 by date submitted to Federal forensic laboratories.

[8] NFLIS State and local forensic drug reports were queried on 2/6/2014.

[9] FMC refers to both 3-FMC and 4-FMC.

cathinone substances include vomiting, palpitations, chest pain, hyperthermia, rhabdomyolysis, hyponatremia, seizures, and altered mental status (paranoia, hallucinations, and delusions). Finally, the possibility of death for individuals abusing 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP indicates that these substances are serious public health threats. Some of these synthetic cathinone substances have been directly or indirectly implicated in the death of individuals. For example, a 24-year-old female died after ingesting two capsules of what she believed to be ''Ecstasy'' but was subsequently confirmed to be a mixture of methylone and butylone. The cause of death determined by the medical examiner was serotonin syndrome secondary to methylone and butylone ingestion. A 21-year-old male who ingested butylone for suicidal intentions died after he developed seizures and suffered a cardiac and respiratory arrest. The cause of death was reported as multi-organ failure resulting from malignant serotonin syndrome.

**Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety**

Based on the above summarized data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for these synthetic cathinones in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b). Based on available data and information for 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP, the Deputy Administrator has made the determination that these 10 synthetic cathinones have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Deputy Administrator through a letter dated November 7, 2013, notified the Assistant Secretary of the DEA's intention to temporarily place these 10 synthetic cathinones in schedule I.

**Conclusion**

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Deputy Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily place 10 synthetic cathinones, 4-MEC, 4-MePPP, α-PVP, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP into schedule I of the CSA, and finds that placement of these synthetic cathinones into schedule I of the CSA is warranted in order to avoid an imminent hazard to the public safety.

Because the Deputy Administrator hereby finds that it is necessary to temporarily place these synthetic cathinones into schedule I to avoid an imminent hazard to the public safety, the final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register,** and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

**Requirements for Handling**

Upon the effective date of this final order, 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP become subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, exporting, research, conduct of instructional activities, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, conducts instructional activities with, or possesses), or desires to handle, 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP, must 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 as of March 7, 2014. Any person who currently handles 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP, and is not registered with the DEA, must submit an application for registration and may not continue to handle 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP as of March 7, 2014, unless the DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA.

2. *Security.* 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of March 7, 2014.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302 as of March 7, 2014. Current DEA registrants shall have 30 calendar days from March 7, 2014, to comply with all labeling and packaging requirements.

4. *Inventory.* Every DEA registrant who possesses any quantity of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP on the effective date of this order, must take an inventory of all stocks of these substances on hand as of March 7, 2014, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d). Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements.

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, and α-PBP) on hand on a biennial basis, pursuant to 21 U.S.C. 827, 958, and in

accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

5. *Records.* All DEA registrants must maintain records with respect to 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR parts 1304, 1307, and 1312 as of March 7, 2014. Current DEA registrants authorized to handle 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

6. *Reports.* All DEA registrants who manufacture or distribute 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33 as of March 7, 2014.

7. *Order Forms.* All registrants who distribute 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of March 7, 2014.

8. *Importation and Exportation.* All importation and exportation of 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of March 7, 2014.

9. *Quota.* Only registered manufacturers may manufacture 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

10. *Criminal Liability.* Any activity involving 4-MEC, 4-MePPP, α-PVP, butylone, pentedrone, pentylone, 4-FMC, 3-FMC, naphyrone, or α-PBP not authorized by, or in violation of the CSA, occurring as of March 7, 2014, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

**Regulatory Matters**

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety. Further, the DEA believes that this temporary scheduling action final order is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action 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. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 808(2) of the Congressional Review Act (CRA), ''any rule for which an agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety from new or designer drugs or abuse of those drugs. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose a threat to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order shall take effect immediately upon its publication.

**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 amended 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 § 1308.11 by adding new paragraphs (h)(19) through (h)(28), to read as follows:

**§ 1308.11 Schedule I.**

* * * * *

(h) * * *

(19) 4-methyl-*N*-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers—1249 (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one)

(20) 4-methyl-*alpha*-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers—7498 (Other names: 4-MePPP; MePPP; 4-methyl-α-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one)

(21) *alpha*-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers—7545 (Other names: α-PVP; α-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one)

(22) Butylone, its optical, positional, and geometric isomers, salts and salts of

isomers—7541 (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one)

(23) Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers—1246 (Other names: α-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one)

(24) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers—7542 (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one)

(25) 4-fluoro-*N*-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers—1238 (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one)

(26) 3-fluoro-*N*-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers—1233 (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one)

(27) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers—1258 (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one)

(28) *alpha*-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers—7546 (Other names: α-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one)

Dated: February 28, 2014.

**Thomas M. Harrigan,**

*Deputy Administrator.*

[FR Doc. 2014–04997 Filed 3–6–14; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 1

**RIN 1545–AC47**

### Privacy Act, Implementation

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of an amendment to this part to reflect revisions of existing Internal Revenue Service (IRS) systems of records and to exempt the resulting revised systems of records from certain provisions of the Privacy Act. Criminal Investigation has revised five systems of records and deleted one system of records. This final rule applies the previously approved exemptions to the newly revised and renamed systems of records.

**DATES:** Effective April 7, 2014.

**ADDRESSES:** Please submit comments to Anne Jensen, Tax Law Specialist, Office of Privacy, Governmental Liaison, and Disclosure, 1111 Constitution Avenue NW., Room 1621, Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 317–4997 (not a toll-free call).

**FOR FURTHER INFORMATION CONTACT:** Anne Jensen, Tax Law Specialist, Office of Privacy, Governmental Liaison, and Disclosure, 1111 Constitution Avenue NW., Room 1621, Washington, DC 20024. Ms. Jensen may be reached via telephone at (202) 317–4997 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 552a(j)(2): Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Department of the Treasury have as their principal function activities pertaining to the enforcement of criminal laws. The IRS is hereby giving notice of a final rule to exempt ''Treasury/IRS 46.002, Management Information System and Case Files, Criminal Investigation''; ''Treasury/IRS 46.003, Confidential Informant Records, Criminal Investigation''; ''Treasury/IRS 46.005, Electronic Surveillance and Monitoring Records, Criminal Investigation''; ''Treasury/IRS 46.015, Relocated Witness Records, Criminal Investigation''; and ''Treasury/IRS 46.050, Automated Information Analysis and Recordkeeping, Criminal Investigation,'' from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(j)(2) to the extent these records capture criminal matters; otherwise 5 U.S.C. 552(k)(2) applies as described in subsequent sections.

The exemptions pursuant to 5 U.S.C. 552a(j)(2) are from the provisions 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g). As published in Part 1, Subpart C, of title 31 of the Code of Federal Regulations, section 1.36, these exemptions already apply to the records to which this final rule applies, therefore the reasons for the exemptions are not repeated here.

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. The IRS is hereby giving notice of a final rule to exempt ''Treasury/IRS 46.050, Automated Information Analysis and Recordkeeping'' from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2).

The exemptions pursuant to 5 U.S.C. 552a(k)(2) are from the provisions (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. As published in Part 1, Subpart C, of title 31 of the Code of Federal Regulations, section 1.36, these exemptions already apply to the records to which this final rule applies; therefore the reasons for the exemptions are not repeated here.

As required by Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act, the Department of the Treasury has determined that the revision of the systems or records notices would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

**List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

## PART 1—[AMENDED]

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. In § 1.36;

■ a. In the table in paragraph (c)(1)(vii):

■ i. Revise the entries for IRS 46.002, 46.003, and 46.005;

■ ii. Remove the entry for IRS 46.009;

■ iii. Revise the entry for IRS 46.015;

■ iv. Remove the entry for IRS 46.022; and

■ v. Revise the entry for IRS 46.050.

■ b. In the table in paragraph (g)(1)(vii), revise the entry for IRS 46.050.

The revisions read as follows:

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

* * * * *

(c) * * *

(1) * * *

(vii) * * *

| No. | System name |
|---|---|
| Treasury/IRS 46.002 | Management Information System and Case Files, Criminal Investigation. |
| Treasury/IRS 46.003 | Confidential Informant Records, Criminal Investigation. |
| Treasury/IRS 46.005 | Electronic Surveillance and Monitoring Records, Criminal Investigation. |
| Treasury/IRS 46.015 | Relocated Witness Records, Criminal Investigation. |
| Treasury/IRS 46.050 | Automated Information Analysis and Recordkeeping, Criminal Investigation. |

* * * * *

(g) * * *

(1) * * *

(vii) * * *

| No. | System name |
|---|---|
| Treasury/IRS 46.050 ..... | Automated Information Analysis and Recordkeeping, Criminal Investigation. |

* * * * *

Dated: February 20, 2014.

**Helen Goff Foster,**

*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

[FR Doc. 2014–04946 Filed 3–6–14; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2013–0227; FRL–9906–93–Region 6]**

## Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Regional Haze and Interstate Transport Affecting Visibility; State Implementation Plan Revisions; Revised BART Determination for American Electric Power/Public Service Company of Oklahoma Northeastern Power Station Units 3 and 4

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Oklahoma State Implementation Plan (SIP), submitted by the Oklahoma Department of Environmental Quality (ODEQ) to EPA on June 20, 2013, which address revised Best Available Retrofit Technology (BART) requirements for sulfur dioxide ($SO_2$) and oxides of nitrogen ($NO_X$) for Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern Power Station in Rogers County, Oklahoma. The revisions also address the requirements of the Clean Air Act (CAA) concerning non-interference with programs to protect visibility in other states.

**DATES:** This final rule will be effective April 7, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0227. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Johnson (214) 665–2154, email *johnson.terry@epa.gov.*

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

### Table of Contents

I. What is the background for this action?
II. What final action is EPA taking?
III. Response to Comments
IV. Statutory and Executive Order Reviews

### I. What is the background for this action?

The background for today's final rule is discussed in detail in our August 21, 2013 proposal (see 78 FR 51686). The comment period was open for 30 days, and 273 comments were received, including five comment letters opposed to the proposed action.

### II. What final action is EPA taking?

We are approving Oklahoma's June 20, 2013 SIP revision submittal (''Oklahoma RH SIP revision''), which provides a revised BART determination for Units 3 and 4 of AEP/PSO's Northeastern Power Station with accompanying enforceable documentation. This revised $SO_2$ BART determination includes the following emission control requirements and

compliance schedules: (1) By January 31, 2014, the facility will comply with an interim $SO_2$ emission limit of 0.65 lb/MMBtu at each unit individually on a 30-day rolling average basis, with an additional $SO_2$ limit of 3,104 lb/hr per unit on a 30-day rolling average basis; (2) by December 31, 2014, the facility will comply with a reduced interim $SO_2$ emission limit of 0.60 lb/MMBtu per unit on a 12-month rolling average basis, with an additional 25,097 tpy combined cap for Units 3 and 4 on a 12-month rolling basis; (3) the facility will shut down one of the subject units (either Unit 3 or Unit 4) no later than April 16, 2016; (4) the facility will install and operate a dry sorbent injection (DSI) system on the unit that remains in operation past April 16, 2016; (5) the unit remaining in operation will comply with an $SO_2$ emission limit of 0.40 lb/MMBtu on a 30-day rolling average basis from April 16, 2016 through December 31, 2026, with additional limits of 1,910 lb/hr on a 30-day rolling average basis and 8,366 tpy on a 12-month rolling basis (this limit may be lowered pursuant to the results of an optimization study to be conducted by AEP/PSO); and (6) the facility will incrementally decrease capacity utilization for the remaining unit between 2021 and 2026, culminating with the complete shutdown of the remaining unit no later than December 31, 2026. The state's revised enforceable $SO_2$ BART requirements for Units 3 and 4 of the Northeastern Power Station are contained in the submitted ''First Amended Regional Haze Agreement, DEQ Case No. 10–025 (March 2013)'' that revises the previously submitted ''PSO Regional Haze Agreement, DEQ Case No. 10–025 (February 10, 2010). Consequently, we are approving the ''PSO Regional Haze Agreement, DEQ Case No. 10–025 (February 10, 2010),'' as amended by the ''First Amended Regional Haze Agreement, DEQ Case No. 10–025 (March 2013).''

We are also taking final action to approve the following accelerated $NO_X$ BART compliance schedule included in the submitted revised BART determination for Northeastern Power Station Units 3 and 4: (1) By December 31, 2013, the facility will comply with an emission limit of 0.23 lb/MMBtu on a 30-day rolling average basis with an additional limit of 1,098 lb/hr per unit on a 30-day rolling average basis and a 9,620 tpy combined cap for both units; and (2) the unit that remains in operation shall undergo further control system tuning and by April 16, 2016, comply with an emission limit of 0.15 lb/MMBtu on a 30-day rolling average basis with an additional limit of 716 lb/hr on a 30-day rolling average basis and a cap of 3,137 tpy on a 12-month rolling basis. ODEQ also submitted an enforceable agreement containing the accelerated compliance schedule. For the revised $NO_X$ BART determination, therefore, we also are approving the ''PSO Regional Haze Agreement, DEQ Case No. 10–025 (February 10, 2010),'' as amended by the ''First Amended Regional Haze Agreement, DEQ Case No. 10–025 (March 2013),'' because it makes enforceable the $NO_X$ BART emission limitations and schedules for AEP/PSO's BART-subject units in Oklahoma.

In addition to approving Oklahoma's revised enforceable $SO_2$ BART determination for AEP/PSO Northeastern Power Station Units 3 and 4, we are also taking final action to approve that portion of the Oklahoma RH SIP revision concerning Oklahoma's interstate transport obligations. With the approval of this revised BART determination for AEP/PSO Northeastern Power Station Units 3 and 4, the enforceable RH Agreement, and an enforceable commitment, we find that the Oklahoma RH SIP as a whole addresses the requirements of the interstate transport provisions of CAA section 110(a)(2)(D)(i)(II) as applied to this source and its associated impacts on other states' programs to protect visibility in Class I Areas. The ODEQ's enforceable commitment is found in the SIP Narrative at page 10.

Implementation of the enforceable commitment is only necessary if the Northeastern Power Station is not able to achieve the equivalent of 0.3 lbs $SO_2$/million Btu through a combination of unit shutdowns and implementation of DSI, as this level of reduction was assumed in the multistate modeling performed by the Central Regional Air Planning Association (CENRAP) that provided the basis for Oklahoma's and other Midwestern States' SIPs. The enforceable commitment obligates ODEQ to ''obtain and/or identify additional $SO_2$ reductions within the State of Oklahoma to the extent necessary to achieve the anticipated visibility benefits estimated'' by the CENRAP. For example, any additional $SO_2$ emissions reductions that can be obtained or identified from the northeast quadrant of the State will be presumed to count toward the emission reductions necessary to achieve the anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station. Emissions reductions obtained outside the northeast quadrant that are technically justified will also be counted. Finally, if necessary, additional emissions reductions shall be obtained via enforceable emission limits or control equipment requirements where necessary and submitted to EPA as a SIP revision as expeditiously as practicable, but in no event later than the end of the first full Oklahoma legislative session occurring subsequent to AEP/PSO's submission of the evaluation and report required by Paragraph 1(f) of Attachment A of the AEP/PSO Settlement Agreement presented in Appendix I of the Oklahoma RH SIP revision. Moreover, any additional reductions that are obtained prior to the 2018 Regional Haze SIP revision required by 40 CFR 51.308(f) but not accounted for in the above-referenced modeling will be identified in the 2018 revision.

We have made the determination that the Oklahoma RH SIP revision is approvable because the revision was adopted and submitted as a SIP revision in accordance with the CAA and EPA regulations regarding the regional haze program and meets the CAA provisions concerning non-interference with programs to protect visibility in other states. We are taking this final action today under section 110 and part C of the CAA.

As explained in our August 21, 2013 proposal (see 78 FR 51686), as a result of today's approval action we are taking action to amend the regional haze Federal Implementation Plan (FIP) for Oklahoma at 40 CFR 52.1923. The action to amend the FIP is in a separate action contained in today's **Federal Register**. Upon the effective date of the **Federal Register** notice amending the FIP, Units 3 and 4 of AEP/PSO's Northeastern Power Station will no longer be covered by the FIP.

## III. Response to Comments

We received a total of 273 comments, including five comments in opposition to our proposed approval of the Oklahoma RH SIP revision that were submitted by U.S. Representative Jim Bridenstine, the Oklahoma Attorney General, the Consumer Coalition of Oklahoma, the Oklahoma Industrial Energy Consumers, and the Quality of Service Coalition, and 268 comments in support from the Sierra Club and its members in Oklahoma. Copies of the comments are available in the docket for this rulemaking. A summary of the issues raised in the comment letters, and our responses, follows:

*Comment:* We received several comment letters containing claims that ODEQ's revised BART determination for the AEP/PSO Northeastern Power

Station did not consider true energy impacts. These comment letters generally assert that ODEQ did not make a reasonable BART determination because it relied upon AEP/PSO's BART analysis, which they claim failed to consider the true energy impacts of compliance and the costs of compliance under the Settlement Agreement.[1] The commenters claim that overlooking these costs of compliance led to an incorrect determination of cost-effectiveness of the $SO_2$ emissions controls attributable to the early retirements under the Settlement Agreement. The commenters submit that early retirement of the two coal-fired units at issue constitutes at least an indirect energy impact that is ''unusual or significant'' and quantifiable and therefore should have been considered in ODEQ's BART analysis. The commenters further assert that ODEQ has concluded that the revised BART determination is cost-effective based on an analysis that does not include replacement capacity and energy costs that AEP/PSO would be required to incur due to the mandated early retirement of the two units. Finally, these commenters also submit that ODEQ and EPA should have considered in their energy impacts analyses the ''significant economic disruption or unemployment'' that will result from the Oklahoma RH SIP revision and cite the risk of rate shock resulting from natural gas price fluctuations, risk of reduction of electric grid reliability, and potential for increased unemployment.

*Response:* We disagree with these commenters. The BART Guidelines only require states to consider the direct energy consumption of the various control options under consideration, not indirect energy impacts.[2] While the BART guidelines do allow states to consider indirect impacts if they would be ''unusual or significant,'' there is no indication that Oklahoma ignored any such impacts here. The commenters allege that retirement of the AEP/PSO units will lead to ''significant economic disruption or unemployment'' or rate shock, but provide no evidence to support such assertions. Consequently, we believe the State acted reasonably by focusing its BART analysis on the direct energy impacts of the various control options.

We also note that AEP/PSO offered the BART determination in question to ODEQ as an alternative to our FIP, which indicates that the company found the alternative more economical, flexible, or consistent with its business strategy. AEP/PSO's decision to retire these aging units by dates certain is one that involves a variety of considerations that lie outside the BART analysis, including increasing costs of maintenance, economics of fuels, and costs of compliance with non-air quality requirements. Given the broad range of factors that affect a utility's decisions regarding the make-up of its power plant fleet, it would not be reasonable for EPA to second-guess decisions regarding the remaining useful life of facilities. Consequently, we believe that, in addition to its evaluation of energy impacts, the State also appropriately considered the remaining useful life of the AEP/PSO units in determining BART.

Regarding potential unemployment of AEP/PSO Northeastern Power Station workers, however, we received one comment that notes that AEP/PSO has extraordinary resources to redeploy its Northeastern Power Station employees affected by the Settlement Agreement and proposed SIP revision, and has committed to doing so.

*Comment:* We received several comment letters suggesting that the proposed SIP revision is a fuel switch masquerading as BART. These commenters point out that BART, by its very nature, must be a ''retrofit technology.'' They note that the BART Guidelines set forth the five basic steps of a case-by-case BART analysis, which are centered on the evaluation and identification of ''available emission retrofit control technologies.'' These commenters assert that inclusion of a facility closure as part of a BART determination necessarily results in a fuel switch, as the subject utility must acquire replacement capacity. In their view, EPA will have directed a switch in fuel forms—the direct opposite of the agency's stated intent in the BART Guidelines.

*Response:* We disagree with the commenters that a BART analysis is limited to the consideration of options that require the installation of controls. We note that both AEP/PSO and Oklahoma Gas and Electric (OG&E) have voluntarily adopted fuel switching in the past as a strategy to address BART when they switched to low sulfur coal. Although EPA disagreed that low sulfur coal constituted BART, it was not because the option represented a fuel switch, but rather because we found that the installation of more stringent controls constituted BART. Although EPA's regulations do not require states to consider a fuel switch or a shutdown of an existing unit as part of their BART analyses, a state can certainly include such options in its analysis where a company voluntarily offers such measures as a strategy for reducing emissions.

*Comment:* We received comments that our proposed action abandoned the unit-by-unit approach to analyzing BART. These commenters reference our Technical Support Document for the proposed approval of the Oklahoma RH SIP revision, which states that BART should be a unit-by-unit analysis, and assert that in proposing to approve ODEQ's BART determination, EPA has abandoned the unit-by-unit analysis and instead compared the ODEQ's BART determination involving the shutdown of a generating unit against our FIP's proposed emissions control technologies and related emissions limits. The commenters claim that in so doing, EPA has inappropriately evaluated the closure of a unit as a ''technology'' and analyzed two units together. Another commenter takes the opposite view, observing that ''EPA has not taken the approach of comparing the SIP Revision to the FIP. Appropriately, EPA has simply reviewed ODEQ's BART analysis for consistency with the Clean Air Act and the BART Guidelines.''

*Response:* As we noted in our proposal, while BART determinations are typically made on a unit-by-unit basis, we believe that ODEQ's decision to evaluate BART on a facility-wide basis is a reasonable way to take into account the visibility and energy and non-air quality environmental benefits associated with unit shutdowns. While we believe ODEQ's facility-wide approach to BART is reasonable, we also analyzed BART on a unit by unit basis.[3] We then conducted our own unit-by-unit analysis to confirm the State's conclusions, including the consideration of a scenario not considered by ODEQ, in which the unit that remains in operation after April 16, 2016 would install dry flue gas desulfurization/spray dryer absorber (DFGD/SDA) rather than DSI. We also made adjustments to ODEQ's cost and visibility calculations to take into account more recent information regarding the facility's baseline ''uncontrolled'' emissions and the remaining useful life of the facility. The adjustments were necessary to properly

[1] The state of Oklahoma and AEP/PSO filed petitions for review of EPA's FIP, and the parties have separately entered into a settlement agreement that includes a timeline for preparing and processing the Oklahoma RH SIP revision that is the subject of today's action. A copy of the Settlement Agreement may be found in Appendix I of the Oklahoma RH SIP revision.

[2] 40 CFR Part 51, app. Y, at IV.D.4.h.2.

[3] 78 FR 51692

assess the cost and visibility factors on a unit-by-unit basis.

*Comment:* We received several comments concerning our costs of compliance analysis. The commenters believe that we underestimated the costs of compliance associated with ODEQ's revised BART determination for AEP/PSO's units. One of the several commenters that believed we underestimated the costs of compliance conducted an independent analysis and believes that estimates prepared by AEP/PSO benefit from ''accounting gimmicks.'' This commenter states that its analysis demonstrates that the Oklahoma RH SIP revision will cost $529 million more in net present value and $3 billion more in nominal dollars than the FIP currently in place. We also received a comment in support of our costs of compliance analysis, which states that it would not be legally sound for ODEQ to have considered the costs of replacement power or any other costs beyond those of emission controls in its revised BART analysis.

*Response:* Unfortunately, we cannot respond to the commenters' assertions, because the commenter failed to provide any details concerning its cost analysis. We note, however, that regardless of the cost of the State's BART determination, EPA cannot disapprove a SIP measure simply because the measure will be more costly than controls required in a FIP. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*Comment:* We received one comment in support of the proposed action, which indicated that the Oklahoma RH SIP revision submittal satisfies EPA's and ODEQ's obligations under the Clean Air Act. The commenter notes that the CAA instructs states to contemplate the remaining useful life of the source and the BART Guidelines acknowledge that a company may agree to shut down a unit prior to the statutory deadline for BART controls. The commenter asserts that ODEQ acted properly in taking into account AEP/PSO's enforceable commitment to retire one unit by 2016 when comparing costs. Likewise, the Commenter believes that EPA's conclusion that DSI is more cost-effective than DFGD/SDA is correct, as demonstrated by the agency's unit-by-unit analysis and taking into account the remaining useful life of the plant.

*Response:* We thank the commenter for the support and agree with the commenter's conclusions.

*Comment:* We received two comments asserting that EPA and ODEQ have usurped the authority of the Oklahoma Corporation Commission (OCC) and ordered the closure of a facility without consideration of system reliability impacts, rate impacts, or any other impacts on AEP/PSO customers. These commenters assert that regulatory issues associated with the retirements have never been considered by the OCC, which has the specialized expertise and appropriate jurisdiction to consider such issues.

*Response:* We are not usurping the OCC's authority by approving a SIP revision submitted from the State of Oklahoma that requires the closure of any of AEP/PSO's facilities. On the contrary, we are carrying out our statutory obligations to review the Oklahoma RH SIP revision. We are required to approve a SIP revision that complies with the applicable requirements of the CAA and our implementing regulations. 42 U.S.C. 7410(k). Here, ODEQ made a revised BART determination for Units 3 and 4 at the Northeastern Power Station that relied on retirement dates proposed and agreed to by the facility's owner, AEP/PSO. We have reviewed ODEQ's revised BART determination and concluded that it satisfies all applicable requirements of the CAA, the Regional Haze Rule, and the BART Guidelines. Therefore, we are required to approve the Oklahoma SIP revision.

*Comment:* We received one comment that our proposed action triggers requirements of the Regulatory Flexibility Act (RFA). This commenter claims that the proposed action will have significant adverse economic impact on small entities, including small commercial and industrial customers of PSO, contrary to EPA's certification otherwise, and that requirements of the Regulatory Flexibility Act are thus triggered.

*Response:* Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the agency's action. *See, e.g., Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000); *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985). The EPA's action here would not establish requirements applicable to small entities. In our proposal, we certified that our rule will not have a significant economic impact on a substantial number of small entities in compliance with the RFA. We reached this decision because our SIP approval under section 110 of the Clean Air Act does not itself create any new requirements but simply approves Oklahoma's existing State rule. Our action does not place additional regulatory burdens on any entity including AEP ratepayers. Therefore, we properly certified that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*Comment:* We received one comment concerning compliance with Executive Order (EO) 12866 and OMB review of the proposed action. The commenter states that the costs reviewed by ODEQ and EPA related only to plant modifications and equipment to achieve the suggested regional haze and interstate transport reductions. The commenter notes that Executive Order 12866, section 1(11) states that ''each agency shall tailor its regulations to impose the least burden on society, including individuals, business of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.'' The commenter asserts that the societal impacts of EPA's proposed approval of the Oklahoma RH SIP revision should have been considered and that the proposed action should have undergone OMB review.

*Response:* Under EO 12866, an action is economically significant if it is likely that it may ''[h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' EO 12866 allows OMB to review actions that fall within this category. This action was not reviewed by OMB because our rule is not economically significant. It is merely an approval under section 110 of the Clean Air Act. It does not create any additional requirements but merely approves an existing state rule. Thus, our rule would not result in costs over $100 million or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

*Comment:* We received several comments concerning tribal consultation issues and compliance with Executive Order 13175. These commenters believe that the energy

impacts of the revised BART determination, in particular significant rate increases, will have tribal implications and impose substantial direct compliance costs on tribal governments. One commenter notes that AEP/PSO's service territory covers portions of at least 13 federally recognized Indian tribes and that the Choctaw Nation recently participated in AEP/PSO's energy efficiency program. These commenters question whether our proposed action complies with EO 13175 and request that we prepare a tribal impact summary statement.

*Response:* Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), directs agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' EO 13175 section (5)(a). Consistent with EO 13175, the 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations, and the May 4, 2011 EPA Policy on Consultation and Coordination with Indian Tribes, Region 6 provided information concerning this action at a regular meeting of the Tribal Environmental Coalition in Oklahoma that was held at the Sac and Fox Learning Center on July 16, 2013 and also offered an opportunity to engage in government-to-government consultation with Regional Tribal management. Additionally, Region 6 provides information and updates at quarterly Regional Tribal Operations Committee (RTOC) meetings. To date, no Tribes have provided comments to EPA or requested government-to-government consultation with the Region on this action.

EO 13175 section (5)(b) states that no agency may promulgate any regulation that has tribal implications, imposes substantial direct compliance costs on Indian tribal governments, and is not required by statute unless the direct costs of compliance with the proposed rule are paid by the Federal government or the agency consults with tribes, provides the Director of OMB a tribal summary impact statement, and makes available to the Director of OMB any written communication tribal officials submitted to the agency. Our approval of the Oklahoma RH SIP revision does not directly apply since the facility is not located in Indian country. Moreover, the facilities that will incur the direct costs of compliance are not tribally owned or operated. The possibility that a tribe, as a consumer, may be affected by a rate change, does not implicate EO 13175. Therefore, EPA was not required to prepare a tribal impact summary statement.

*Comment:* We received one comment that our proposed action does not comply with our own policy on tribal consultation. The commenter suggests that we should suspend this rulemaking until we have engaged in consultation with affected tribes in Oklahoma. The commenter notes that AEP/PSO serves a portion of the Osage Indian Reservation in northeast Oklahoma, and that the following tribal nations have casinos within AEP/PSO's service territory: the Choctaw Nation in Broken Arrow and McAlester; the Osage Nation in Tulsa, Bartlesville, and Sand Springs; and the Muscogee (Creek) Nation in Okmulgee.

*Response:* Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, Region 6 provided information concerning this action at a regular meeting of the Tribal Environmental Coalition in Oklahoma that was held at the Sac and Fox Learning Center on July 16, 2013 and offered an opportunity to engage in government-to-government consultation with Regional Tribal management. Additionally, Region 6 provided information and updates at quarterly Regional Tribal Operations Committee (RTOC) meetings. No Tribes provided comments to EPA or requested government-to-government consultation on this action.

*Comment:* We received several comments regarding opportunities for public participation associated with this proposed action, in particular concerning the number and location of public hearings. These commenters point out that the only public hearing on the Oklahoma RH SIP revision was conducted by ODEQ in Oklahoma City in May 2013, and that no public hearings have been conducted by EPA or conducted within the affected AEP/PSO service territories, which cover the northeastern and southwestern corners of the state. The commenters request that additional public hearings be conducted by EPA within the AEP/PSO service territories to allow potentially affected citizens a better opportunity to provide meaningful comments on EPA's proposed approval of the Oklahoma RH SIP revision. One commenter references EPA's proposed FIP for BART at the Navajo Generating Station (NGS) in Arizona for which EPA has committed to conduct several public hearings throughout Arizona. Two of the commenters additionally note that no hearing was conducted for the Settlement Agreement associated with ODEQ's revised BART determination for Units 3 and 4 at Northeastern Power Station.

*Response:* The CAA requires a state to provide an opportunity to request a public hearing on any proposed SIP revision before it is adopted. 42 U.S.C. 7410(a)(2) and 7410(l). Additionally, 40 CFR 51.102(a) spells out these public hearing requirements; however, the regulation is silent concerning the location of any public hearing that is held, and multiple public hearings are not required. For SIP revisions, the hearing requirement is appropriately assigned to the states because the state agencies, rather than the EPA, are adopting the substantive requirements of the SIP and have the ability to amend the proposed SIP revision in response to comments received. The ODEQ fulfilled this requirement with the public hearing it conducted in Oklahoma City on May 20, 2013.

When promulgating a FIP, such as EPA's proposed FIP for BART at NGS in Arizona referenced by the commenter, EPA is required to provide an opportunity for public hearing. 42 U.S.C. 7607(d)(1)(B) and (5). Likewise, in the process of promulgating our FIP for BART in Oklahoma, we conducted two hearings in 2011 in Oklahoma City and Tulsa. However, today's action does not promulgate a FIP, but rather approves the State's submittal to revise its RH SIP. Neither the CAA nor the Administrative Procedures Act (APA) requires EPA to provide a public hearing for actions on SIPs.

In taking action on this SIP submittal, EPA has complied with the applicable statutory requirements for public participation under the Administrative Procedure Act, which does not require an opportunity for public hearing. 5 U.S.C. 553(c). While a public hearing is not statutorily required for SIP actions, EPA recognizes that the EPA retains discretion to offer public hearings. EPA elected not to conduct a public hearing for this SIP action for several reasons. EPA may conduct a discretionary public hearing when it is necessary to glean additional information from the public; however, we did not feel that it was necessary here. We believe the opportunities for public participation during ODEQ's rulemaking process, including the State's public hearing, along with the opportunity to provide written comments to EPA on our proposed approval of the Oklahoma RH SIP revision provided significant opportunity for affected citizens in Oklahoma to participate in this rulemaking. In response to the **Federal Register** notice, we received 273 comments on our proposed approval of the Oklahoma RH SIP revision, all of

which are given full consideration in this final action. In our view, this demonstrates that the public had sufficient opportunity to participate in this rulemaking.

Finally, the CAA requires EPA to provide a 30-day public comment period before EPA enters any proposed settlement agreement; however, this requirement is limited to written comments. 42 U.S.C. 7413(g). EPA met this requirement when it published a 30-day notice in the **Federal Register** (77 FR 67814, November 14, 2012) and considered comments received on the proposed Settlement Agreement. EPA was not required to offer a public hearing for the Settlement Agreement associated with ODEQ's BART determination.

*Comment:* We received numerous comments that the Oklahoma RH SIP revision will result in significant visibility improvements. These commenters conclude that overall, the Oklahoma RH SIP revision is the less polluting option compared to the FIP currently in place and will result in significant visibility improvements and tangible economic benefits. One commenter believes that these visibility improvements are likely understated in analyses conducted by EPA and ODEQ, even for the first five years. For example, the commenter notes that the Oklahoma RH SIP revision will result in earlier $NO_X$ reductions than would have occurred under ODEQ's original SIP or EPA's FIP, and that neither agency evaluated the likely reductions in visibility impairment as the second unit ramps down capacity between 2016 and 2026.

*Response:* We acknowledge these commenters' support and agree that there are additional visibility benefits associated with the Oklahoma RH SIP that were not fully analyzed.

*Comment:* We received numerous comments that the Oklahoma RH SIP revision will result in significant reductions in harmful air pollutants. One commenter states that the Northeastern Power Station's $NO_X$ emissions, and their contribution to ozone, are particularly problematic for the region's efforts to maintain healthy air quality levels. This commenter also explains that the plant's $SO_2$ emissions threaten to cause exceedances of federal air quality standards. This commenter notes that both it and EPA Region 6 have conducted air dispersion modeling indicating that the plant's emissions contribute to ambient $SO_2$ levels that exceed the 1-hour $SO_2$ National Ambient Air Quality Standards (NAAQS). The commenter further notes that in addition to reduced $NO_X$, $SO_2$ and PM, the Oklahoma RH SIP revision will result in reductions of approximately 210 pounds of mercury emissions per year. The commenter observes that the environmental benefits of the Oklahoma RH SIP revision are not limited to air quality but also include reductions in toxic coal ash that threaten to contaminate local ground water resources and reduced waste water discharges containing pollutants.

*Response:* We agree with the commenter's conclusions that the Oklahoma RH SIP revision will have additional environmental benefits beyond reducing regional haze.

*Comment:* We received one comment in support of the proposed action that, in addition to promoting clean air and reducing regional haze, the Oklahoma RH SIP revision will conserve Oklahoma's water resources. The commenter notes that EPA has correctly recognized that the Oklahoma RH SIP revision submittal will reduce water usage at the Northeastern Power Station and that this incidental benefit is important in light of the extreme drought conditions facing Oklahoma. The commenter states that in response to its data requests in proceedings before the OCC, AEP/PSO has estimated that the increase in water consumption at the Northeastern Power Station, if it were to add dry scrubbers to both units, would be 65 times greater than with a retrofit of activated carbon injection (ACI) and DSI at just one unit, pursuant to the Oklahoma RH SIP revision. Furthermore, the commenter notes, water currently consumed by the units will be released for other uses upon the retirement of the units in 2016 and 2026.

*Response:* We agree with the commenter that there are non-air quality co-benefits associated with the Oklahoma RH SIP revision.

*Comment:* We received one comment in support of the proposed action concerning the cost-effectiveness of the Oklahoma RH SIP revision. The commenter concludes that the Oklahoma RH SIP revision is more cost-effective than the FIP currently in place and less costly overall. The commenter cites AEP/PSO's $942/ton $SO_2$ removed cost-effectiveness estimate and notes that the Oklahoma RH SIP revision will allow AEP/PSO to avoid potentially significant compliance costs associated with other upcoming regulations, including: the Mercury Air Toxics Standards (MATS), disposal of coal combustion residuals, effluent limitations guidelines, a revised (lowered) ozone NAAQS, the 1-hour primary $SO_2$ NAAQS, Cross-State Air Pollution Rule and Clean Air Interstate Rule (CSAPR/CAIR), and carbon controls for existing power plants under the President's climate change initiative.

*Response:* We agree with the commenter's conclusions and note that an AEP/PSO representative made similar comments in recent testimony before the OCC.

*Comment:* We received one comment in support of the proposed action concerning the Oklahoma RH SIP revision's consistency with the State Energy Plan. The commenter notes that, although not directly relevant to ODEQ's statutory obligations or EPA's review, the Oklahoma RH SIP revision is consistent with the State of Oklahoma's energy plan, which prioritizes the increased use of Oklahoma's energy resources such as wind and natural gas, and protection of public health and the environment. The commenter notes that Oklahoma is currently an exporter of both natural gas and wind power, but a major importer of coal.

*Response:* We thank the commenter for the support.

*Comment:* We received several comments concerning the potential of the Oklahoma RH SIP revision submittal to hurt or help overall reliability of the power grid. Several commenters claim that the Oklahoma RH SIP revision submittal will result in lower reliability of the grid by reducing the percentage of power generated by coal combustion and increasing reliance on electricity generated by natural gas combustion, which is subject to more price and availability fluctuations. Another commenter suggests that the Oklahoma RH SIP revision submittal will result in improved reliability of the grid. This commenter notes that as the amount of wind power in Oklahoma and the Southeast Power Pool rises, fossil generation will be required to ramp production up and down more frequently, and to shut down for various periods of time during high wind production. The commenter asserts that switching to natural gas and implementing energy efficiency and demand response programs will result in resources better suited than coal-fired units to integrate with variable wind generation.

*Response:* We cannot comment on speculative impacts on the reliability of electrical grid in Oklahoma that may or may not result from this revised BART determination for Units 3 and 4 at Northeastern Power Station. Issues regarding grid reliability are more properly addressed by the Oklahoma Corporation Commission and the electricity providers such as AEP/PSO.

In addition to the comments submitted directly to EPA, some commenters also incorporated by reference the following comments from Oklahoma Industrial Energy Consumers and Quality of Service Coalition that were submitted to ODEQ during its public comment period on the state-proposed SIP revision, which ended in May 2013. These comments and our responses follow below:

*Comment:* The commenters state that ODEQ did not rely on an updated emissions inventory in its revised BART determination and assert that an updated emissions inventory is essential to the overall determination of BART-eligible sources in Oklahoma and to the determination of sources required to install BART, and that ODEQ is required to consider and address the anticipated net effect on visibility resulting from changes projected in point, area, and mobile source emissions by 2018. The commenters also reference an Arizona Department of Environmental Quality (ADEQ) regional haze submission, in which EPA required ADEQ to provide the most recent emissions inventory data available.

*Response:* The determination of subject-to-BART sources was based on modeling of maximum actual emissions during the baseline period of 2001–2003, and EPA has already approved ODEQ's determinations of BART-eligible and subject-to-BART sources. An updated emission inventory would have no impact on these determinations that have already been acted upon. Furthermore, the visibility modeling performed to determine sources subject-to-BART and to inform BART determinations consists of single-source modeling utilizing CALPUFF and requires only the pre-control and post-control emission rates of the source being evaluated. This action and the Oklahoma RH SIP revision only address the requirements for a BART determination for a subject-to-BART source. We have already approved the modeling and emission inventories for the first regional haze planning period, and these requirements do not have to be revisited until the next planning period.

With respect to the Arizona regional haze SIP revision referenced by the commenters, 40 CFR 51.308(d)(4)(v) requires a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. This inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. States must also include in their regional haze SIPs a commitment to update this inventory periodically. Arizona did not satisfy this requirement because it failed to include the 2008 emission inventory when it submitted its regional haze SIP in 2011. Oklahoma, however, did satisfy this requirement because ODEQ included its most recent emission inventory as Appendix 4–1 of its original regional haze SIP submittal. This requirement is unrelated to the requirements for a BART determination and is not relevant to this action.

*Comment:* The commenters state that AEP/PSO Northeastern Power Station Units 3 and 4 currently provide a significant percentage of all energy supplied to AEP/PSO customers and cite low fuel cost associated with operation of those facilities as the reason for the high energy contribution from Units 3 and 4. The commenters express concern that replacement energy may be supplied by more expensive natural gas-fueled facilities. The commenters assert that the need for replacement energy is quantifiable, the estimated cost of that replacement energy is quantifiable, and that ODEQ should have factored these costs into its determination of a reasonable progress goal.

*Response:* As ODEQ noted in its response to comments, the Oklahoma RH SIP revision does not include any changes to the Chapter IX of the SIP, which concerns reasonable progress goals. The SIP revision submittal does, however, identify further reasonable progress actions that are expected to further these goals. This action does not address the approvability of Oklahoma's reasonable progress plan which will be addressed in a separate action. In addition, as we explained in an earlier response, ODEQ appropriately considered the direct energy impacts of the various control options. Consideration of the speculative costs of replacement energy that may or may not be required once Units 3 and 4 retire is not required by the BART Guidelines and would not be required by the four-factor analysis required for reasonable progress.

*Comment:* The commenters imply that ODEQ mandated the early retirements of Units 3 and 4 and further state that ODEQ did not consider costs of replacement energy and capacity as existing units are retired, including the cost of replacement capacity and energy arising from the mandated retirement of one of the units in 2016, the cost of replacement energy arising from the capacity restrictions which are imposed on the second unit during the period 2021–2026, and the cost of replacement capacity and energy arising from the mandated retirement of the second unit no later than 2026.

*Response:* We concur with ODEQ's response to this comment. ODEQ did not, in fact, mandate the early retirement or capacity restrictions on either unit. Rather, AEP/PSO proposed these planned activities in its air quality operating permit application submitted as a revision to their previous submittal under ODEQ's BART requirements rule. See OAC 252:100–8–76 . Subsequently, ODEQ entered into an administrative order with AEP/PSO to make these planned activities enforceable and therefore eligible to be relied upon in the BART review. Regarding the consideration of replacement energy costs, see our prior response.

*Comment:* Citing the Regional Haze Rule and the BART Guidelines, the commenters assert that the State cannot mandate the early retirement of an electric generating unit as part of a BART determination.

*Response:* We disagree with this comment. While it is true that the Regional Haze Rule and BART Guidelines do not contemplate unit retirements as a potential BART option, neither rule prohibits states or EPA from considering a shutdown as part of a BART determination if the strategy is proposed by the owner of a BART-eligible source. Moreover, the CAA and EPA's implementing regulations require states to consider the remaining useful life of a source when determining BART. Here, ODEQ did not unilaterally mandate the retirement of Units 3 and 4. Rather, AEP/PSO made a business decision regarding the remaining useful life of these units and proposed that ODEQ include the corresponding shutdown dates as a feature of its revised BART determination. To allow AEP/PSO to take credit for the emission reductions associated with its chosen retirement dates, ODEQ appropriately issued an administrative order that made the shutdown dates enforceable and included these dates in the Oklahoma RH SIP revision.

*Comment:* The commenters argue that ODEQ did not demonstrate that the Oklahoma RH SIP revision meets the requirement that alternatives to BART must achieve greater reasonable progress than would be achieved through the installation and operation of BART (i.e., DFGD/SDA). The commenters note that on page 11 of the Revised BART Report (attachment to the Oklahoma RH SIP revision), it is acknowledged that DFGD/SDA ''would provide improvements in visibility above that achieved with the DSI system'' but that such improvements

would not be perceptible. The commenters assert that this conclusion clearly indicates that the revised BART determination does not meet the greater reasonable progress standard with regard to visibility improvement.

*Response:* We concur with ODEQ's response to this comment. The regulation cited by the commenters, 40 CFR 51.308(e)(2)(i), addresses alternative measures states may adopt in lieu of requiring sources subject to BART to install, operate, and maintain BART. The Oklahoma RH SIP revision currently under review is not an alternative to BART. Rather, it is a revision of the State's BART determination for the AEP/PSO Northeastern Power Station. Therefore, the cited section of the Regional Haze Rule is not applicable. As ODEQ indicated, it is not necessary that the BART determination in the Oklahoma RH SIP revision achieve greater visibility improvement than the EPA's BART determination in the FIP. Rather, the CAA and Regional Haze Rule require only that a source-specific BART determination be based on a reasoned analysis of the five statutory BART factors analysis in accordance with the procedures in the BART Guidelines.

*Comment:* Citing further concerns over compliance with greater reasonable progress requirements, the commenters state that a significant portion of the emissions reductions attributed to the Oklahoma RH SIP revision could also be achieved by switching to ultra-low sulfur coal, as required by the original Oklahoma RH SIP, and by installing DSI control technology to meet requirements of the MATS rule. They conclude that by including emissions reductions arising from DSI and by ignoring reductions which could be achieved through switching to ultra-low sulfur coal, the Oklahoma RH SIP revision overstates the emissions reductions that are attributable to the revised BART determination, which are surplus to reductions that would be achievable through other control measures or by implementing measures to meet CAA requirements that existed as of the baseline date of the state-proposed SIP revision.

*Response:* We concur with ODEQ's response to this comment. As ODEQ noted in responses to similar comments, the Oklahoma RH SIP revision is a revision of the State's BART determination for the AEP/PSO Northeastern Power Station and is not a proposal for an alternative to BART. Therefore, the greater reasonable progress requirements do not apply. We also agree with ODEQ's conclusion that installation of the DSI control technology to satisfy the BART requirements will provide additional confidence that the facility will be able to comply with the MATS rule.

*Comment:* The commenters claim that the Oklahoma RH SIP revision fails to meet the requirement at 40 CFR 51.308(e)(2)(iii) that all necessary emission reductions take place during the period of the first long-term strategy for regional haze, which ends in 2018, because the level of $SO_2$ emissions under the state-proposed SIP revision is expected to be significantly higher than emissions under the EPA's FIP until well after 2018.

*Response:* We concur with ODEQ's response to this comment. The Oklahoma RH SIP revision is a revision of the State's BART determination for the AEP/PSO Northeastern Power Station and is not a proposal for an alternative to BART. Therefore, the timing requirements of 40 CFR 51.308(e)(2)(iii) do not apply.

*Comment:* The commenters question the statement on page 12 of the Revised BART Report that cumulative $SO_2$ and $NO_X$ emissions from Units 3 and 4 are expected to be approximately 36% of the emissions level that would result from EPA's FIP. The commenters state that the underlying details of the analysis supporting the expected $SO_2$ and $NO_X$ reductions were not provided with the Revised BART Report and that, absent back-up documentation, these projected emissions reductions are unreliable and cannot be used to justify the Oklahoma RH SIP revision.

*Response:* We concur with ODEQ's response to this comment. ODEQ's calculation of projected emissions reductions was not a significant factor in its revised BART determination for Units 3 and 4. However, the projected reductions did provide ODEQ with a reasonable comparison of the results of the FIP with those of the Oklahoma RH SIP revision. As ODEQ explained in its response, the capital recovery factor used to establish the annualized costs of the DFGD/SDA option assumed a lifespan of 30 years. Because the FIP does not restrict capacity utilization, no such restrictions were assumed in this calculation. Consequently, the total emissions attributable to the FIP were calculated by multiplying the $SO_2$ and $NO_X$ emission rates by full load heat input, assuming continuous operation for 30 years. In contrast, the total emissions associated with the Oklahoma RH SIP revision factored in the shorter lifespan of the units and reduced capacity utilization.

*Comment:* The commenters contend that the Oklahoma RH SIP revision ignores the additional $NO_X$ emissions that would be produced by gas-fired generation or purchased power sources that AEP/PSO would have to acquire to replace Units 3 and 4 after they are retired in 2016 and 2026. Additionally, the commenters state that it was assumed that, if retrofitted with DFGD/SFA, Units 3 and 4 would operate for another 30 years (i.e., until 2046), which is inconsistent with AEP/PSO testimony to the OCC indicating that the units would likely be retired by 2030, only13 years after the retrofits are implemented. The commenters conclude that if the emissions reductions associated with the Oklahoma RH SIP revision were recalculated to reflect a shorter remaining useful life of Units 3 and 4, and to account for $NO_X$ emissions produced from sources that replace Units 3 and 4, they would be significantly reduced.

*Response:* We concur with ODEQ's response to this comment. As explained in previous responses, consideration of speculative replacement energy sources is not required by the BART Guidelines. We further agree with ODEQ's assessment that any replacement energy is unlikely to be procured from a source with environmental impacts comparable to or greater than those of Units 3 and 4, which are coal-fired. This is due to the fact that BART addresses a very specific group of large existing sources that were placed in operation before many of the current national air quality programs were in place. Replacement energy would in all likelihood come from a newer source subject to the Best Available Control Technology (BACT) requirements of the Prevention of Significant Deterioration (PSD) permitting program.

Furthermore, regarding the life-span of Units 3 and 4 under the FIP scenario, EPA recognizes that the cost of scrubbers is significant and that if a source makes such an investment, it will likely make other necessary investments to extend operation to recoup the costs. Thus, consistent with our standard practices for conducting BART determinations and cost-effectiveness analyses we assumed a 30-year useful life for the wet scrubber systems and responded to comments on this issue when we took final action in promulgating our FIP. The BART guidelines do allow for consideration of the remaining useful life of facilities when considering the costs of potential BART controls. Any claims regarding the remaining useful life of a facility or a source have to be secured by an enforceable requirement. AEP/PSO did not claim any such restrictions on the operation of Units 3 and 4 of Northeastern Power Station when we

promulgated our FIP. Consequently, we assumed a remaining useful life of 30 years in our BART analysis. We indicated in our responses to comments that if AEP/PSO were to decide the units in question have a shorter useful life such that installing scrubbers is no longer cost effective, and would be willing to accept an enforceable requirement to that effect, a revised BART analysis could be submitted by the plant(s) in question and our FIP could be re-analyzed accordingly. Similarly, we indicated that we could also review a revised SIP submitted by ODEQ. Ultimately, AEP/PSO did seek an enforceable commitment to limit the remaining useful life of Units 3 and 4 of Northeastern Power Station, and ODEQ subsequently submitted its RH SIP revision that is the subject of this action.

*Comment:* The commenters assert that the BART analysis supporting the state-proposed SIP revision is based on AEP/PSO long-term planning studies that are no longer valid. The commenters note that AEP/PSO informed the OCC that it will need to revise its Integrated Resource Plan (IRP) to reflect previously unanticipated increases in near-term peak demand due to recent significant growth in oil and gas production activities on its system. The commenters assert that these changes will increase replacement energy costs for Units 3 and 4 and also increase future $SO_2$ and $NO_X$ emissions, thus significantly altering the results of the state's BART analysis. The commenters conclude that the state-proposed SIP revision rulemaking activities should be postponed until the revised AEP/PSO IRP is approved by the OCC and then the ODEQ can revise its BART determination to take these changes into account and go back to proposal.

*Response:* We concur with ODEQ's response to this comment. As discussed in responses to previous comments, consideration of replacement energy and associated emissions is not required by the BART Guidelines.

*Comment:* The commenters state that the ODEQ's proposed revised BART determination for Units 3 and 4 and its proposed SIP revision do not take into account potential impacts on AEP/PSO customers. Citing EPA's **Federal Register** notice taking final action promulgating the FIP (76 FR 81749) and Oklahoma statute 27A O.S. 2–5–107(4), the commenters assert that consideration of such economic impacts is required.

*Response:* We concur with ODEQ's response to this comment. As ODEQ correctly points out, the **Federal Register** reference citation provided by the commenters addresses AEP/PSO's freedom to reduce emissions by alternative methods so long as the BART emission limit is met: ''[E]mission limits may also be met with reconfiguration of the units to burn natural gas, the companies themselves are free to determine whether this option best responds to future customer needs and preferences, including any potential impact on rates.'' This statement remains true within the restrictions imposed by the Oklahoma RH SIP revision. ODEQ also correctly notes that the Oklahoma statute referenced in the comment, 27A O.S. § 2–5–107(4), only applies to the considerations required by the Air Quality Advisory Council in deciding whether to recommend a rule or rule amendment to the Environmental Quality Board. The revised BART determination for Northeastern Power Station Units 3 and 4, and the associated Oklahoma RH SIP revision, are not rules. Therefore 27A O.S. § 2–5–107(4) does not apply.

## 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 Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely 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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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 dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, and Visibility.

Dated: February 7, 2014.

**Ron Curry,**

*Regional Administrator, Region 6.*

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.*

### Subpart LL—Oklahoma

■ 2. Amend § 52.1920 by:

■ a. Amending in paragraph (d) the table titled ''EPA Approved Oklahoma Source-Specific Requirements'' by adding a new entry at the end of the table for ''Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plant''.

■ b. Amending in paragraph (e) the first table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' by revising the entry for Regional haze SIP and adding new entries at the end of the table for ''Revision to the Regional haze SIP concerning Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plant'' and ''Enforceable commitment for visibility concerning Units 3 and 4 of the AEP/PSO Northeastern plant.''

The revisions and additions read as follows:

**§ 52.1920 Identification of plan.**

* * * * *

(d) * * *

EPA APPROVED OKLAHOMA SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit No. | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * * | * | * | * |
| Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plant. | PSO Regional Haze Agreement, Case No. 10–025 (February 2010) and Amended Regional Haze Agreement, DEQ Case No. 10–025 (March 2013). | 6/20/2013 | 3/7/2014 [Insert citation of publication]. | |

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * * | * | * | * |
| Regional haze SIP: .....<br>(a) Determination of baseline and natural visibility conditions.<br>(b) Coordinating regional haze and reasonably attributable visibility impairment.<br>(c) Monitoring strategy and other implementation requirements.<br>(d) Coordination with States and Federal Land Managers.<br>(e) BART determinations except for the following $SO_2$ BART determinations: Units 4 and 5 of the Oklahoma Gas and Electric (OG&E) Muskogee plant; and Units 1 and 2 of the OG&E Sooner plant. | Statewide ..... | 2/17/2010 | 3/7/2014 [Insert citation of publication]. | Core requirements of 40 CFR 51.308. Initial approval 12/28/2011, 76 FR 81728. |
| * * | * * | * | * | * |
| Revision to the Regional haze SIP concerning Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plant. | Rogers County ..... | 6/20/2013 | 3/7/2014 [Insert citation of publication]. | Revised BART determination. |

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP—Continued

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal | EPA approval date | Explanation |
|---|---|---|---|---|
| Enforceable commitment for visibility concerning Units 3 and 4 of the AEP/PSO Northeastern plant. | Rogers County | 6/20/2013 | 3/7/2014 [Insert citation of publication]. | If a $SO_2$ emission limit of 0.3 lb/MMBtu is not met the State will obtain and/or identify additional $SO_2$ reductions within Oklahoma to the extent necessary to achieve the anticipated visibility benefits estimated by the Central Regional Air Planning Association (CENRAP). |

* * * * *

■ 3. Amend § 52.1928 by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 52.1928 Visibility protection.**

* * * * *

(c) The $SO_2$ BART requirements for Units 4 and 5 of the Oklahoma Gas and Electric (OG&E) Muskogee plant, and Units 1 and 2 of the OG&E Sooner plant; the deficiencies in the long-term strategy for regional haze; and the requirement for a plan to contain adequate provisions to prohibit emissions from interfering with measures required in another state to protect visibility are satisfied by § 52.1923.

(d) The revision to the Regional Haze plan submitted on June 20, 2013 concerning Units 3 and 4 of the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern plant is approved. For this source the plan addresses requirements for BART and adequate provisions to prohibit emissions from interfering with measures required in another state to protect visibility. As called for in the plan if a $SO_2$ emission limit of 0.3 lb/MMBtu is not met the State will obtain and/or identify additional $SO_2$ reductions within Oklahoma to the extent necessary to achieve the anticipated visibility benefits estimated by the Central Regional Air Planning Association (CENRAP).

[FR Doc. 2014–03854 Filed 3–6–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2013–0227; FRL–9906–81–OAR]**

## Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan Revisions; Withdrawal of Federal Implementation Plan for American Electric Power/Public Service Company of Oklahoma

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to amend a Federal Implementation Plan (FIP) for Oklahoma that became effective on January 27, 2012, as it applies to Units 3 and 4 of the Northeastern Power Station in Rogers County, Oklahoma, which is operated by the American Electric Power/Public Service Company of Oklahoma (AEP/PSO). We are removing the FIP requirements for AEP/PSO because, in a separate action being published in today's **Federal Register**, we are taking final action to approve revisions to the Oklahoma State Implementation Plan (SIP), submitted by the Oklahoma Department of Environmental Quality (ODEQ) to EPA on June 20, 2013, which address revised Best Available Retrofit Technology (BART) requirements for sulfur dioxide ($SO_2$) and oxides of nitrogen ($NO_X$) for Units 3 and 4 of AEP/PSO's Northeastern Power Station in Rogers County, Oklahoma. The revisions (collectively, the ''Oklahoma SIP revisions'') also address the requirements of the Clean Air Act (CAA) concerning non-interference with programs to protect visibility in other states.

**DATES:** This final rule will be effective April 7, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0227. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Johnson (6PD–L), Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–L), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2154. Mr. Johnson can also be reached via electronic mail at *johnson.terry@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

''we,'' ''us,'' or ''our'' is used, we mean EPA.

**Table of Contents**

I. What is the background for this action?
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## I. What is the background for this action?

The Oklahoma regional haze (RH) and interstate transport (IT) FIP being amended by this action was promulgated in order to address certain deficiencies in Oklahoma's BART determinations concerning the appropriate level of control of $SO_2$ emissions for Units 3 and 4 of AEP/PSO's Northeastern Power Station, as well as Units 4 and 5 of Oklahoma Gas and Electric's (OG&E) Muscogee Plant and Units 1 and 2 of the OG&E's Sooner Plant. On December 28, 2011, EPA disapproved the $SO_2$ BART determinations for all six units and simultaneously issued a FIP containing a more stringent $SO_2$ BART determination (76 FR 81728). In the same action, EPA approved the Oklahoma IT SIP, except to the extent that it relied on the disapproved $SO_2$ BART determinations for the six units mentioned above. The FIP containing the more stringent $SO_2$ BART determinations also satisfied EPA's FIP obligation arising from the disapproval of the IT SIP.

The background for this final rule and the separate action also being published today that approves the Oklahoma SIP revisions is discussed in detail in our August 21, 2013 proposal (see 78 FR 51686). The comment period was open for 30 days, and we received 273 comments in response to our proposed action.

## II. What final action is EPA taking?

We are withdrawing the Oklahoma RH and IT FIP at 40 CFR 52.1923, as it applies to Units 3 and 4 of AEP/PSO's Northeastern Power Station. Therefore, as of the effective date of this final rule, the Oklahoma RH and IT FIP will no longer apply to AEP/PSO Northeastern Power Station. The Oklahoma RH and IT FIP provisions applicable to OG&E's Muscogee and Sooner plants are unaffected by this action and remain in place.

As explained in our August 21, 2013 proposal (see 78 FR 51686), this action is made possible because of our separate action being published in today's **Federal Register** to approve the Oklahoma SIP revisions, which update the Oklahoma RH and IT SIP to include a revised BART determination for Units 3 and 4 of AEP/PSO's Northeastern Power Station, as well as an enforceable commitment to address any shortfall that may occur with respect the emission reductions relied upon in the IT SIP. EPA has made the determination that the Oklahoma RH SIP revision is approvable because the plan's provisions meet all applicable requirements of the CAA and EPA implementing regulations.

EPA is finalizing this action under section 110 and part C of the Act.

## III. Responses to Comments Received

We received a total of 273 comments concerning our proposed action. The issues raised in those comment letters are summarized, along with our response to each, in the separate notice being published in today's **Federal Register** that approves the Oklahoma SIP revisions. Copies of the comments are available in the docket for this rulemaking. (Please see Docket No. EPA–R06–OAR–2013–0227 in the regulations.gov Web site).

## IV. Statutory and Executive Order Reviews

Withdrawal of the Oklahoma RH and IT FIP as it applies to AEP/PSO Northeastern Power Station means that the Federal plan no longer applies to this facility.

### *A. Executive Order 12866—Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This FIP withdrawal action for AEP/PSO's Northeastern Power Station 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*

This FIP withdrawal action for AEP/PSO Northeastern Power Station does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this FIP amendment under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens. Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business 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 which is independently owned and operated and is not dominant in its field.

This rule withdraws the FIP for AEP/PSO's Northeastern Power Station, which is not a small entity, and does not create any new requirements. After considering the economic impact of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

### *D. Unfunded Mandates Reform Act*

This FIP withdrawal action for AEP/PSO's Northeastern Power Station contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This FIP withdrawal action for AEP/PSO's Northeastern Power Station is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action removes a Federal plan for AEP/PSO's Northeastern Power Station. Small governments are not impacted.

### *E. Executive Order 13132—Federalism*

This FIP withdrawal action for AEP/PSO Northeastern Power Station does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states

take the lead in developing SIPs including SIPs to attain the NAAQS and to meet other applicable CAA requirements including the Best Available Retrofit requirements in CAA section 169(b)(2)(A) and the Visibility Impairment requirements in CAA section 110(a)(2)(D)(i)(II). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This FIP withdrawal action for AEP/PSO's Northeastern Power Station does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to the withdrawal of the Oklahoma RH and IT FIP for AEP/PSO's Northeastern Power Station. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the executive order has the potential to influence the regulation. This action is not subject to EO 13045 because EPA is withdrawing the Oklahoma RH and IT FIP for AEP/PSO's Northeastern Power Station, as authorized by the CAA.

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

This FIP withdrawal action for AEP/PSO's Northeastern Power Station is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This FIP withdrawal action for AEP/PSO's Northeastern Power Station does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

This final rule 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).

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 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 dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, and Volatile organic compounds.

Dated: February 7, 2014.

**Gina McCarthy,**

*Administrator.*

Title 40, chapter I, of the Code of Federal Regulations 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 52.1923 is amended by revising the section heading, and paragraphs (a), (c), and (e)(1) to read as follows:

### § 52.1923 Best Available Retrofit Requirements (BART) for $SO_2$ and Interstate pollutant transport provisions; What are the FIP requirements for Units 4 and 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 and 2 of the Oklahoma Gas and Electric Sooner plant affecting visibility?

(a) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the coal burning equipment designated as: Units 4 or 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 or 2 of the Oklahoma Gas and Electric Sooner plant.

* * * * *

(c) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the CAA and in parts 51 and 60 of this chapter. For the purposes of this section:

*24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

*Air pollution control equipment* includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants that would be emitted to the atmosphere.

*Boiler-operating-day* means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

*Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

*Heat input* means heat derived from combustion of fuel in a unit and does

not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

*Owner or Operator* means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated as:

(i) Unit 4 of the Oklahoma Gas and Electric Muskogee plant; or

(ii) Unit 5 of the Oklahoma Gas and Electric Muskogee plant; or

(iii) Unit 1 of the Oklahoma Gas and Electric Sooner plant; or

(iv) Unit 2 of the Oklahoma Gas and Electric Sooner plant.

*Regional Administrator* means the Regional Administrator of EPA Region 6 or his/her authorized representative.

*Unit* means one of the coal fired boilers covered under paragraph (a) of this section.

* * * * *

(e) * * *

(1) No later than the compliance date in paragraph (b) of this section, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for $SO_2$ on Units 4 and 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 and 2 of the Oklahoma Gas and Electric Sooner plant in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for $SO_2$ shall be determined by using data from a CEMS.

* * * * *

[FR Doc. 2014–03857 Filed 3–6–14; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 130312235–3658–02]**

**RIN 0648–XD117**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; Trip Limit Reduction

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

**ACTION:** Temporary rule; trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit for vermilion snapper in or from the exclusive economic zone (EEZ) of the South Atlantic to 500 lb (227 kg), gutted weight. This trip limit reduction is necessary to protect the South Atlantic vermilion snapper resource.

**DATES:** This rule is effective 12:01 a.m., local time, March 11, 2014, until 12:01 a.m., local time, July 1, 2014.

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

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

The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is divided into two 6-month time periods, and is 401,874 lb (182,287 kg), gutted weight (446,080 lb (202,338 kg), round weight), for the January 1 through June 30, 2014, fishing season, and 401,874 lb (182,287 kg), gutted weight (446,080 lb (202,338 kg), round weight), for the July 1 through December 31, 2014, fishing season, as specified in 50 CFR 622.190(a)(4)(i)(B) and (ii)(B), respectively.

Under 50 CFR 622.191(a)(6)(ii), NMFS is required to reduce the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), gutted weight (1,110 lb (503 kg), round weight), to 500 lb (227 kg), gutted weight (555 lb (252 kg), round weight), when 75 percent of the fishing season quota is reached or projected to be reached, by filing a notification to that effect with the Office of the Federal Register, as implemented by the final rule for Regulatory Amendment 18 (78 FR 47574, August 6, 2013). Based on current statistics, NMFS has determined that 75 percent of the available commercial quota for the January 1 through June 30, 2014, fishing season, for vermilion snapper will be reached on or before March 11, 2014. Accordingly, NMFS is reducing the commercial trip limit for vermilion snapper to 500 lb (227 kg), gutted weight (555 lb (252 kg), round weight), in or from the South Atlantic EEZ at 12:01 a.m., local time, on March 11, 2014. This 500-lb (227-kg), gutted weight, trip limit will remain in effect until July 1, 2014, or until the quota is reached and the commercial sector closes, whichever occurs first.

### Classification

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

This action is taken under 50 CFR 622.191(a)(6) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available scientific information recently obtained from the fishery. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect vermilion snapper because the capacity of the fishing fleet allows for rapid harvest of the ACL (quota). Prior notice and opportunity for public comment for this trip limit reduction would require time and would result in the trip limit reduction not being implemented, and increase the probability that the commercial ACL (commercial quota) will be exceeded.

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

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04991 Filed 3–4–14; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 121009528–2729–02]**

**RIN 0648–XD116**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2014 commercial summer flounder quota to the Commonwealth of Virginia. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

**DATES:** Effective March 4, 2014, through December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Management Specialist, 978–281–9224.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 132,788 lb (60,232 kg) of its 2014 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to mechanical failure and hazardous weather between January 1, 2014, and January 31, 2014, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder commercial quotas for calendar year 2014 are: North Carolina, 2,993,041 lb (1,357,621 kg); and Virginia, 2,560,571 lb (1,161,455 kg).

#### Classification

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

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04993 Filed 3–4–14; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 131021878–4158–02]**

**RIN 0648–XD160**

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2014 total allowable catch of Pacific cod to be harvested.

**DATES:** Effective March 4, 2014, through 2400 hours, Alaska local time (A.l.t.), December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2014 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,905 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,700 mt of the A season apportionment of the 2014 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 1,700 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 meters(m)) length overall (LOA) using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2014 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) are revised as follows: 205 mt to the A season apportionment and 1,474 mt to the annual amount for vessels using jig gear, and 6,218 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential

disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04992 Filed 3–4–14; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 120918468–3111–02]**

**RIN 0648–XD157**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2014 Pacific cod total allowable catch apportioned to catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 4, 2014, through 1200 hours, A.l.t., June 10, 2014.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2014 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA is 2,436 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013) and inseason adjustment (79 FR 601, January 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2014 Pacific cod TAC apportioned to catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,406 mt and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04994 Filed 3–4–14; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 131021878–4158–02]**

**RIN 0648–XD158**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance and the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2014 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 7, 2014, until 2400 hrs, A.l.t., December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea

and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2014 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 15,500 metric tons (mt) and the Community Development Quota (CDQ) is 1,900 mt as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014).

As of March 4, 2014, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 7,750 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 7,750 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ from the Aleutian Islands subarea to the 2014 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ is added to the 2014 Bering Sea CDQ DFA. The remaining 7,750 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2014 pollock incidental catch allowance remains at 38,770 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) are revised as follows: 7,350 mt to Aleut Corporation's DFA and 0 mt to CDQ pollock. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) is revised to make 2014 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2013 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 3—FINAL 2014 AND 2015 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2014 Allocations | 2014 A season [1] | | 2014 B season [1] | 2015 Allocations | 2015 A season [1] | | 2015 B season [1] |
|---|---|---|---|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bering Sea subarea | 1,276,650 | n/a | n/a | n/a | 1,258,000 | n/a | n/a | n/a |
| CDQ DFA | 128,600 | 51,440 | 36,008 | 77,160 | 125,800 | 50,320 | 35,224 | 75,480 |
| ICA [1] | 38,770 | n/a | n/a | n/a | 38,495 | n/a | n/a | n/a |
| AFA Inshore | 554,640 | 221,856 | 155,299 | 332,784 | 546,853 | 218,741 | 153,119 | 328,112 |
| AFA Catcher/Processors [3] | 443,712 | 177,485 | 124,239 | 266,227 | 437,482 | 174,993 | 122,495 | 262,489 |
| Catch by C/Ps | 405,996 | 162,399 | n/a | 243,598 | 400,296 | 160,118 | n/a | 240,178 |
| Catch by CVs [3] | 37,716 | 15,086 | n/a | 22,629 | 37,186 | 14,874 | n/a | 22,312 |
| Unlisted C/P Limit [4] | 2,219 | 887 | n/a | 1,331 | 2,187 | 875 | n/a | 1,312 |
| AFA Motherships | 110,928 | 44,371 | 31,060 | 66,557 | 109,371 | 43,748 | 30,624 | 65,622 |
| Excessive Harvesting Limit [5] | 194,124 | n/a | n/a | n/a | 191,398 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 332,784 | n/a | n/a | n/a | 328,112 | n/a | n/a | n/a |
| Total Bering Sea DFA | 1,109,280 | 443,712 | 310,598 | 665,568 | 1,093,705 | 437,482 | 306,237 | 656,223 |
| Aleutian Islands subarea [1] | 9,350 | n/a | n/a | n/a | 19,000 | n/a | n/a | n/a |
| CDQ DFA | 0 | 0 | n/a | 0 | 1,900 | 760 | n/a | 1,140 |
| ICA | 2,000 | 1,000 | n/a | 1,000 | 2,000 | 1,000 | n/a | 1,000 |
| Aleut Corporation | 7,350 | 7,350 | n/a | 0 | 15,100 | 14,005 | n/a | 1,095 |
| Bogoslof District ICA [7] | 75 | n/a | n/a | n/a | 75 | n/a | n/a | n/a |

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.4 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,000 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04995 Filed 3–4–14; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 111207737–2141–02 and 1112113751–2102–02]**

**RIN 0648–XD159**

## Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

**ACTION:** Temporary rule; opening.

**SUMMARY:** NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 8, 2014, and will close 1200 hours, A.l.t., November 7, 2014. This period is the same as the 2014 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission. The IFQ and CDQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

**DATES:** Effective 1200 hours, A.l.t., March 8, 2014, until 1200 hours, A.l.t., November 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 8, 2014, and will close 1200 hours, A.l.t., November 7, 2014. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–04990 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 79, No. 45
Friday, March 7, 2014

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1005, 1006 and 1007

**[AMS–DA–07–0059; AO–388–A22; AO–356–A43 and AO–366–A51; Doc. No. DA–07–03]**

## Milk in the Appalachian, Florida and Southeast Marketing Areas; Final Decision on Proposed Amendments to Marketing Agreements and to Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This final decision proposes to permanently adopt amendments that adjust the Class I pricing surface of the Appalachian, Florida, and Southeast Federal milk marketing orders. In addition, this decision seeks to adopt proposals that amend certain features of the diversion limit, touch-base, and transportation credit provisions for the Appalachian and Southeast milk marketing orders. This decision also proposes to adopt amendments that increase the maximum administrative assessment for the Appalachian, Florida and Southeast marketing orders. The orders as amended are subject to approval by producers in the affected markets. Producer approval for this action will be determined concurrently with amendments adopted in a separate final decision that amends the transportation balancing fund and other provisions of the Appalachian and Southeast milk marketing orders.

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231-Room 2971, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7311, email address: *erin.taylor@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This final decision adopts amendments that: (1) Adjust the Class I pricing surface in the Appalachian, Florida, and Southeast marketing orders; (2) Make diversion limit standards identical for the Appalachian and Southeast orders: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October, and November, and 35 percent in the months of March, April, May, June, and December; (3) Reduce touch-base standards to one day each month for the Appalachian and Southeast orders; (4) Add January and February as months when transportation credits are paid for the Appalachian and Southeast orders; (5) Provide for the payment of transportation credits in the Appalachian and Southeast orders for full loads of supplemental milk; (6) Provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders; and (7) Increase the monthly transportation credit assessment from $.20 per hundredweight (cwt) to $0.30 per cwt in the Southeast order. This decision also increases the maximum administrative assessment for the Appalachian, Florida, and Southeast orders from $0.05 per cwt to $0.08 per cwt. Increasing the maximum administrative assessment was initially addressed in a separate recommended decision (73 FR 11062). Comments concerning the recommended decision were requested but none were received. Accordingly, this document is the final decision on all proposals addressed in both the tentative final decision (73 FR 11194) for items 1 through 7 above and the recommended decision (73 FR 11062) that were simultaneously published in the **Federal Register** on February 25, 2008.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing a petition with the Department of Agriculture (USDA) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. For the purposes of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000 and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that dairy producers receive, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farmers pooled on the Appalachian order (Order 5), 2,924 dairy farmers pooled on the Southeast order (Order 7), and 283 dairy farmers pooled on the Florida order (Order 6). Of these, 2,612 dairy farmers

in Order 5 (or 95 percent), 2,739 dairy farmers in Order 7 (or 94 percent), and 153 dairy farmers in Order 6 (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers, and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers, and 11 exempt plants). A total of 25 plants were associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-handler, and 2 exempt plants). The number of plants meeting small business criteria under the Appalachian, Southeast, and Florida orders were 8 (or 22 percent), 18 (or 33 percent), and 11 (or 44 percent), respectively.

The adopted amendments in this final decision provide for an increase in Class I prices in the Appalachian, Southeast, and Florida orders. The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by USDA and adding a location-specific differential, referred to as a Class I differential. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities. At the time of the hearing, the Department estimated that the proposed Class I price increases would generate higher marketwide pool values in all three southeastern orders of approximately $18–19 million for the Appalachian order, $17.5 million for the Southeast order, and $38 million for the Florida order, on a monthly basis. It was estimated that monthly minimum prices paid to dairy farmers (blend prices) would increase approximately $0.26 per cwt for the Appalachian order, $0.64 per cwt for the Southeast order, and $1.20 per cwt for the Florida order.

The Class I price increases were implemented on an interim basis effective May 1, 2008.[1] As a result of those increases, marketwide pool values were increased in 2011 by approximately $16 million in the Appalachian order, $38 million in the Florida order, and $16 million in the Southeast order. This resulted in an increase in 2011 monthly minimum prices paid to dairy farms of $0.25 per cwt for the Appalachian order, $1.25 per cwt in the Florida order, and $1.25 per cwt in the Southeast order.

[1] 73 FR 14153.

The adopted amendments revise the Appalachian and Southeast orders by making the diversion limit standards for the orders identical—not to exceed 25 percent in each of the months of January, February, and July through November, and 35 percent in each of the months of March through June and for the month of December. Prior to their interim adoption, the diversion limit standards of the Appalachian order for pool plants and cooperatives acting as handlers were not to exceed 25 percent in each of the months of July through November, January, and February; and 40 percent in each of the months of December and March through June. For the Southeast order, prior to their interim adoption, the diversion limit standards for pool plants and cooperatives acting as handlers were not to exceed 33 percent in each of the months of July through December and 50 percent in each of the months of January through June.

In addition, the adopted amendments establish identical touch-base standards of at least one day's milk production every month for a dairy farmer in the Appalachian and Southeast orders. Prior to their interim adoption, the Appalachian order had a touch-base standard of 6 days' production in each of the months of July through December and not less than 2 days' production in each of the months of January through June. Prior to their interim adoption, the Southeast order had a touch-base standard of not less than 10 days' production in each of the months of July through December and not less than 4 days' production in each of the months of January through June.

The adopted amendments to the pooling standards serve to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with and are consistently serving the fluid needs of the Appalachian and Southeast marketing areas. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I needs and determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. The criteria for pooling are established without regard to the size of any dairy industry or entity. The established criteria are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities.

The adopted amendments add January and February to the months of July through December as months when transportation credits may be paid to those handlers who incur the costs of providing supplemental milk for the Appalachian and Southeast orders. The amendments also expand the payment of transportation credits for supplemental milk to include the full load of milk rather than the calculated Class I portion and provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits. In addition, the maximum monthly transportation credit assessment for the Southeast order is increased from $0.20 per cwt to $0.30 per cwt on all milk assigned to Class I use. The transportation credit provisions are applicable only to the Appalachian and Southeast orders, are applied in an identical fashion to both large and small businesses, and will not have any different impact on those businesses producing manufactured milk products. The changes will not have a significant economic impact on a substantial number of small entities.

The adopted amendments also allow the Market Administrators of the Appalachian, Southeast, and Florida orders to increase the administrative assessment from the current $0.05 per cwt to $0.08 per cwt if necessary to maintain adequate funds for the operation of the orders. Administrative assessments are charged without regard to the size of any dairy industry or entity. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service 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.

This action does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

**Prior Documents in This Proceeding**

*Notice of Hearing:* Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

*Partial Tentative Final Decision:* Issued February 25, 2008; published February 29, 2008 (73 FR 11194).

*Partial Recommended Decision:* Issued February 25, 2008; published February 29, 2008 (73 FR 11062).

*Interim Final Rule:* Issued March 12, 2008; published March 17, 2008 (73 FR 14153).

*Correcting Amendments:* Issued May 6, 2008; published May 9, 2008 (73 FR 26513).

**Preliminary Statement**

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, on May 21–23, 2007, pursuant to a notice of hearing issued May 3, 2007, published May 8, 2007 (72 FR 11194).

Upon the basis of the evidence introduced at the hearing and the record thereof, USDA issued a Tentative Final Decision and a Recommended Decision on February 25, 2008, containing notice of the opportunity to file written exceptions thereto.

The materials issues on the hearing record relate to:

1. Class I Prices—adjustments and pricing surface.
2. Producer milk—diversion limit and touch-base standards.
3. Transportation credit balancing fund provisions.
4. Administrative assessment provisions.

**Findings and Conclusions**

This final decision proposes to adopt proposals, published in the hearing notice as Proposals 1, 2, 3, 4, 5, and 6, seeking to make various changes to the Appalachian, Southeast, and Florida milk marketing orders (hereinafter these marketing areas and marketing orders will collectively be referred to as the southeastern marketing areas or orders as appropriate). These amendments form a package of changes that simultaneously provide for an increase in Class I prices and the Class I pricing surface in the three southeastern orders; and for the Appalachian and Southeast orders, more stringent diversion limit standards, lower touch-base standards, and other specific changes to the transportation credit balancing fund provisions. This final decision also adopts proposals, published in the hearing notice as Proposals 4, 5, and 6, for increasing the maximum administrative assessment rate on producer milk from the current $0.05 per cwt to $0.08 per cwt for the Appalachian, Southeast, and Florida orders.

While the summary of testimony is presented as four separate material issues, the discussion and findings on all material issues are provided after the summary of comments and exceptions.

The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by USDA and adding a location-specific differential, referred to as a Class I differential. The Class I differentials are location-specific by county and parish for all States of the 48 contiguous United States. These Class I differentials are specified in 7 CFR 1000.52.

The diversion limit standards of the Appalachian and Southeast milk orders are described in the *Producer milk* definition of the orders (7 CFR 1005.13 and 7 CFR 1007.13, respectively). The standards specify the maximum volume of milk that may be diverted to a nonpool plant and still pooled and priced under each respective order. Prior to their interim adoption, the diversion limit standards of the Appalachian order for cooperatives acting as handlers (and pool plant operators that are not cooperatives) were not to exceed 25 percent in each of the months of July through November and the months of January and February. Those limits changed to 40 percent in each of the months of March through June as well as the month of December. Prior to their interim adoption for the Southeast order, the diversion limit standards for cooperatives acting as handlers (and pool plant operators that are not cooperatives) were not to exceed 33 percent in each of the months of July through December and 50 percent in each of the months of January through June. As adopted herein, the diversion limit standards of both orders are made identical—not to exceed 25 percent for the months of January, February, and each of the months of July through November, and 35 percent for each of the months of March through June and for the month of December. This represents a modest tightening of the diversion limit standards for the Appalachian order and a significant tightening of the diversion limit standards for the Southeast order.

This decision adopts identical touch-base standards of at least 1 day's milk production per month for a dairy farmer to be considered a producer under each respective order's *Producer milk* definition and for making a producer's milk eligible for diversion to nonpool plants. This represents a significant change from the touch-base standards for the Appalachian and Southeast orders. Prior to their interim adoption, the Appalachian order touch-base standard was 6 days' production in each of the months of July through December and not less than 2 days' production in each of the months of January through June. For the Southeast order, the touch-base standard was not less than 10 days' production in each of the months of July through December and not less than 4 days' production in each of the months of January through June.

Currently, of the three southeastern orders, only the Appalachian and Southeast orders contain provisions for a transportation credit to partially offset handler costs of transporting supplemental milk for Class I use during certain times of the year from producers located outside of the two marketing areas. These producers are not part of the regular and consistent supply of Class I milk to the Appalachian and Southeast marketing areas.

Transportation credit balancing funds were first established for the Appalachian and Southeast (or predecessor orders) in 1996 and operate independently of the producer settlement funds. A monthly per cwt assessment is charged to Class I handlers on a year-round basis on the volume of milk assigned to Class I use at a rate of $0.15 per cwt in the Appalachian order and, prior to its interim adoption, $0.20 per cwt in the Southeast order. Payments from the transportation credit balancing fund are made during the months of July through December (when milk supplies are tightest) in both orders to those handlers that incur the costs of providing supplemental milk. The transportation credit balancing fund provisions were amended in a separate rulemaking and made effective on an interim basis on December 1, 2006 (71 FR 62377), and were again amended by this rulemaking proceeding on an interim basis effective March 18, 2008 (73 FR 14153).

Changes proposed in this final decision to the Appalachian and Southeast order transportation credit balancing fund provisions continue the

previous amendments that were adopted on an interim basis (73 FR 14153). The amendments: (1) Extend the number of months that transportation credit balancing funds may be paid from the current months of July through December to include the months of January and February, with the option of the month of June if requested and approved by the market administrator; (2) expand the payment of transportation credits for supplemental milk to include the entire load of milk rather than the current calculated Class I utilization; (3) provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits; and (4) increase the monthly transportation credit assessment rate from the current $0.20 per cwt to $0.30 per cwt for the Southeast order.

The final decision also recommends adoption of three proposals published in the hearing notice as Proposals 4, 5, and 6 seeking to increase the maximum administrative assessment rates of the Appalachian, Southeast, and Florida orders. Specifically, the maximum administrative assessment rates collected on pooled producer milk in the Appalachian, Southeast, and Florida orders will be increased from the current maximum administrative assessment rate of $0.05 per cwt to $0.08 per cwt. Proposal 4 was submitted by the Appalachian Market Administrator and Proposals 5 and 6 were submitted by the Market Administrator for the Southeast and Florida orders. These proposals were addressed in a separate recommended decision that solicited comments and exceptions to the proposed assessment rate increase. No comments or exceptions to the recommended decision were received.

*1. Class I Prices—Adjustments and Pricing Surface*

A witness appearing on behalf of the proponents, Dairy Cooperative Marketing Association (DCMA) testified in support of temporarily increasing minimum Class I prices in the three southeastern milk marketing orders. The witness testified that all elements of their proposals are offered as a ''single package'' to address the needs of all the southeastern region's dairy industry stakeholders. It was the opinion of the witness that the supply of milk for fluid use in these marketing areas is threatened and that several simultaneous changes to the provisions of the three orders are needed to attract a sufficient quantity of milk to meet the fluid needs of the markets.

According to the witness, DCMA consists of nine Capper-Volstead cooperative members that include Arkansas Dairy Cooperative Association, Damascus, AR; Cooperative Milk Producers Association, Inc., Blackstone, VA; Dairy Farmers of America (DFA), Kansas City, MO; Dairymen's Marketing Cooperative, Inc., Mt. Grove, MO; Lone Star Milk Producers, Inc., Windthorst, TX; Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD–VA), Reston, VA; Select Milk Producers, Inc., Artesia, NM; Southeast Milk, Inc. (SMI), Belleview, FL; and Zia Milk Producers, Inc., Roswell, NM. The witness testified that each of the DCMA members marketed and pooled milk in one or more of the three southeastern milk marketing order areas during 2006.

According to the DCMA witness, during December 2006 members of DCMA pooled more than 87 percent of cooperative and non-member producer milk on the Appalachian order, more than 87 percent of the cooperative and non-member producer milk on the Southeast order, and more than 96 percent of the cooperative and non-member producer milk on the Florida order.

The DCMA witness testified that their proposed changes to the Class I pricing surface better reflect the actual cost of transporting milk and the pattern in which milk produced outside of the marketing areas moves into the three marketing areas. According to the witness, the cost of procuring milk for fluid use for the southeast region has increased because local production is in serious decline and continues to decline at an increasing rate. The witness noted that the three southeastern orders collectively import more than one-third of the region's milk supply during the most deficit months of the year to cover the fluid milk needs. Fluid demand exceeds 300 million pounds of milk each month in the three southeastern marketing areas, the witness said. The witness characterized the economic situation of the dairy industry in the region as dire and marketing conditions as disorderly. The witness asserted that producers currently experience inequitable prices for their milk, that handlers have unequal costs, and that there are insufficient economic incentives for the procurement of milk supplies.

The DCMA witness characterized the southeastern region as having rapid population growth. The witness indicated that the U.S. Census Bureau population growth estimates for the states of Alabama, Arkansas, Florida, Georgia, Mississippi, Louisiana, North Carolina, South Carolina, and Tennessee have collectively increased by 8.4 percent from 2000 to 2006, while the population of the U.S. as a whole increased 6.2 percent.

Using market administrator statistics on in-area milk production for the three southeastern marketing order areas, the DCMA witness contrasted population growth to the region's milk production to demonstrate that the dairy industry is in serious decline. The witness said that during 2006 milk was delivered into the three southeastern orders from at least 27 States. The witness explained that local in-area milk production (milk produced within the geographic marketing area boundaries) during 2006 for both the Appalachian and Southeast areas supplied the entire Class I needs of these two areas only 4 months of the year and Florida's in-state milk production was insufficient to supply the Class I needs in every month of 2006. The witness estimated that the Appalachian and Southeast marketing areas are able to supply only about 76 percent of the milk necessary to meet Class I, Class II, and reserve demands, while in Florida in-area producers are able to supply only about 66 percent of the milk necessary to meet Class I and reserve demands annually. The DCMA witness asserted that minimum Federal order Class I prices have increased only twice in the past 22 years—as a part of the 1985 Farm Bill and as part of Federal milk order reform made effective in January 2000. Specifically, the witness related that the Class I differential for Atlanta increased from $2.30 to $3.08 per cwt in 1985 but was increased by only $.02 to $3.10 in January 2000. According to the witness, under Federal order reform, some Class I differentials in distant milk surplus areas were increased more than in the milk-deficit regions of the southeast.

The DCMA witness was also of the opinion that changes to the Class I price surface resulted in a flattened price surface and narrowed producer blend price differences between orders. The witness testified that such changes diminished the economic incentives to move milk within the southeastern marketing areas as well as to move milk into the deficit southeastern region of the U.S. According to the witness, minimum Class I price differences and returns to producers are simply not high enough to move milk into these deficit markets without substantial over-order premiums.

The DCMA witness explained that since 1986 diesel fuel prices have risen more rapidly than Class I differentials (and thus Class I prices) in the southeastern region. Relying on data of

the Energy Information Administration (EIA) of the U.S. Department of Energy, the witness noted that the U.S. average diesel fuel price increased by 187 percent from 1986 and 2006 (from $0.94 per gallon to $2.07 per gallon.) The witness compared this increase to the 0.64 percent or $0.02 per cwt increase in the Class I differential for Atlanta since 1986.

The DCMA witness testified that the slope of the Class I pricing surface should be changed to progressively increase Class I prices as milk moves to the east and south within the three marketing areas. The witness was of the opinion that changing the slope of the Class I price surface inside the three marketing areas in this way would better encourage milk to move within the marketing areas. Additionally, the witness was of the opinion that pricing signals to producers would direct their supplies to the most milk-deficit portions of the region. In this regard, the witness added that simply raising Class I prices uniformly throughout the three marketing areas would not result in improved pricing signals to producers.

The DCMA witness explained that in developing the proposed Class I price structure and adjustments to current Class I price levels, DCMA considered two alternatives. According to the witness, in one pricing alternative all the Class I price relationships between plants in the three southeastern orders could be retained. However, under this alternative, the witness explained, the Class I prices for the plants on the outer edges of the Appalachian and Southeast marketing area boundaries would increase considerably, resulting in significant changes in price relationships between those plants and plants regulated by adjoining Federal orders.

Alternatively, the DCMA witness said that the slope of the Class I price surface within the three marketing areas could be altered to minimize plant-to-plant Class I price relationship changes. The witness testified that this approach would result in a pricing structure that better reflected actual milk movements from within and outside of the marketing areas. The witness pointed out that in either approach, plant-to-plant price relationships would change and that the method they chose provided the least change in plant-to-plant price relationships.

The DCMA witness also stressed the need for the proposed Class I price adjustments to remain aligned with the Class I price structure in adjoining marketing areas. The witness said that the proposed Class I price surface outside of the three southeastern marketing areas would not be changed. The witness was of the opinion that the proposed Class I price adjustments are reasonably aligned with Class I prices in adjoining marketing areas. Through an analysis of plant-to-plant movements of packaged milk, the witness indicated that DCMA's proposed Class I pricing structure provides pricing adjustments that are reasonable and improves the slope of the Class I price surface.

The DCMA witness explained that both a most distant demand point and several supply locations were identified in developing the proposed Class I price surface. The witness indicated that Miami, FL, was identified as the most distant demand point in the southeastern region from any alternative milk supply area. According to the witness, the five possible major supply locations and their distance to Miami were also identified. These locations included: Wayne County, OH; Jasper County, IN; Hopkins County, TX; Lancaster County, PA; and Franklin County, PA.

The witness indicated that of the five possible supply sources, Wayne County, OH, was determined as the least cost supply location with a calculated Class I price adjustment of $6.14 per cwt at Miami, FL. The witness testified that Class I price adjustments were progressively adjusted to smaller and smaller values as plant location values in the southeastern region were adjusted by their distance from the supply locations.

According to the DCMA witness, the plant-to-plant cost of moving packaged milk was analyzed. The witness testified that successive movements of packaged fluid milk from the outer edge of the Appalachian and Southeast marketing areas towards Miami, FL, were analyzed. As with bulk milk movements, the witness explained, at each plant location the minimum cost of moving packaged milk was determined and compared to the minimum costs of moving bulk milk. The witness concluded that the bulk and plant-to-plant packaged milk movements were very similar.

The DCMA witness testified that the calculated Class I pricing adjustments were re-adjusted so that plants located near each other would have a similar Class I price adjustment. The witness also acknowledged that the proposed pricing structure could not maintain current Class I price relationships because the current Class I price surface does not reflect actual hauling costs. According to the witness, the west-to-east proposed increase in Class I price adjustments reflects higher hauling costs.

The DCMA witness characterized the proposed adjustments to the calculated Class I price surface as being the result of ''smoothing.'' The witness explained that deviation from the calculated Class I price adjustment represents the incorporation of best professional judgment in assuring that plants located near each other have the same Class I price adjustment and the need to maintain alignment with Class I prices in adjoining marketing areas.

According to the DCMA witness, the proposed adjustments for plant locations regulated by the Appalachian order would increase in the range of $0.10 per cwt to $1.00 per cwt; plants regulated by the Southeast order would increase in the range of $0.10 per cwt to $1.15 per cwt; and plants regulated by the Florida order would increase between $1.30 per cwt to $1.70 per cwt. Relying on market administrator data, the DCMA witness concluded that the proposed Class I price increases would generate higher marketwide pool values in all three southeastern orders. According to the witness, the estimated annual increase of the Appalachian order pool for 2004, 2005, and 2006 resulting from the proposed Class I prices alone would have totaled $19.3 million, $18.6 million, and $18.3 million, respectively. For the Southeast order, the witness said, the annual pool value increase would have totaled $16.8 million, $17.1 million, and $17.7 million, respectively. For the Florida order, the witness said, the annual increase in pool value would have totaled $36.4 million, $38.3 million, and $39.2 million, respectively. In estimating the impact on minimum prices paid to dairy farmers, the witness said that average annual minimum uniform prices (as announced at current locations) would have increased by approximately $0.25 per cwt to $0.26 per cwt for the Appalachian order, approximately $0.64 per cwt higher for the Southeast order, and $1.19 per cwt to $1.22 per cwt higher for the Florida order.

The DCMA witness acknowledged and explained that changes in Class I price relationships between plant locations resulting from any changed Class I price surface would be inevitable. In this regard, the witness asserted that the price adjustment differences between plant locations under the DCMA proposal would not exceed the cost of moving Class I fluid milk products and therefore would not result in the uneconomic movement of milk.

The DCMA witness concluded by testifying that orderly marketing would be improved with a Class I price

structure that is more reflective of the true hauling costs to supply the milk-deficit southeastern region. The witness urged that the proposed Class I price adjustments and pricing surface be adopted immediately. The witness reiterated that the proposed Class I price adjustments be temporarily adopted pending any system-wide changes to the Class I differential level and pricing surface.

A total of 11 dairy farmers whose milk is pooled on at least 1of the 3 southeastern orders testified at the hearing in support of DCMA's package of proposals, but suggested modifications on how the package should be changed.

Three of the dairy farmers who testified were cooperative members of MD–VA, DFA, and SMI (cooperatives previously described as member organizations of DCMA). These witnesses testified that the dairy industry in the southeastern region is in need of changes to the three marketing orders to respond to the decline in regional milk production. Their testimonies joined that of the DCMA witness supporting the DCMA proposals.

A dairy farmer whose milk is marketed on the Southeast and Florida marketing orders testified on behalf of Cobblestone Milk Producers, Inc. and Mountain View Farms of Virginia in limited support of the Class I price surface feature of DCMA's package of proposals provided certain modifications were made. This witness agreed with proponents concerning the decline of milk production in the southeastern region and the need to import supplemental milk supplies. According to the witness, lower producer pay prices in the southeastern region have led to rapidly declining production that is not being replaced by new farms or the expansion of existing farms. It was the opinion of this witness that the projected increases in producer pay prices arising from the proposed increase in Class I prices would not be enough to affect production trends in the southeastern region. The witness expressed concern that Class I processors would demand their over-order premiums be lowered to compensate for increases in the three orders' minimum Class I prices. The witness requested that the proposed Class I price adjustments for the Appalachian and Southeast marketing areas be increased but did not offer specific amounts.

Four dairy farmers from North Carolina testified in general support of the proposed Class I price adjustments. Three of the witnesses represented organizations that were part of the Southeast Producers Steering Committee (SPSC), whose members include North Carolina Dairy Producers Association, Georgia Milk Producers Association, Upper South Milk Producers Association, Kentucky Dairy Development Council (KDDC), North Carolina Department of Agriculture and Consumer Services, and the North Carolina Farm Bureau Federation. All four witnesses were of the opinion that the proposed Class I price adjustments would not be adequate to increase prices paid to dairy farmers in order to stem the decline of milk production in the southeastern region. The witnesses were of the opinion that additional efforts should be made to enhance local milk production. One dairy farmer witness testifying on behalf of the KDDC said that other adjustments needed to be made to the proposed Class I price adjustments because Kentucky dairy farmers would benefit less from the proposed adjustments than dairy farmers located in the Southeast and Florida marketing areas. Another North Carolina dairy farmer witness offered the opinion that Appalachian producers would need to receive at least a $1.00 to $1.50 per cwt increase in their mailbox price to stimulate local milk production. A third North Carolina dairy farmer witness stressed that more emphasis should be made on increasing local milk production rather than seeking better ways to import milk into the region. Another dairy farmer, also from North Carolina, expressed concern that over-order premiums might fall because of the proposed Class I prices adjustments. In addition, an SPSC witness, as well as others, called for a comprehensive study to identify problems and alternatives to the proposals regarding the decline of milk production in the southeastern region.

A witness appearing on behalf of National Dairy Holdings (NDH) testified in limited opposition to the Class I price adjustments of the DCMA package. According to the witness, NDH is a national dairy processor with facilities located throughout the United States. The witness indicated no specific opposition to Class I price increases but conditioned such increases on the fair distribution of the revenue to producers in the southeastern region. While the witness testified that NDH has no difficulty procuring milk for its plants located in the southeastern region, the witness acknowledged other testimony that identified milk production problems of the southeastern region and that the region's producers are in need of relief. The witness expressed concern on how the proposals would impact NDH's wholesale packaged milk sales. The witness also suggested that issues discussed at the hearing could be addressed by utilizing a point-of-sale or plant-point pricing method.

A witness appearing on behalf of the Kroger Company (Kroger) testified in opposition to the proposed Class I price adjustments for the Appalachian and Southeast marketing orders. According to the witness, Kroger operates four fluid distributing plants regulated by the Appalachian and Southeast orders (Winchester Farms, Westover Dairy, Heritage Farms Dairy, and Centennial Farms Dairy). The opinion of the witness was that the proposed Class I price adjustments would disrupt traditional pricing relationships, which were established by the 1985 Farm Bill, and would generate competitive discrepancies with adjoining markets.

The Kroger witness testified that the proposed Class I price adjustments would place their plants in an unacceptable competitive situation with each other in the Appalachian and Southeast marketing areas. Specifically, the witness requested that the Class I price adjustments for Louisville, KY; Lynchburg, VA; Murfreesboro, TN; and Atlanta, GA be unchanged. The witness also suggested that Winchester, KY, be increased by no more than $0.10 per cwt in order to maintain competitive milk procurement price relationships with other plants located in the Cincinnati area of the Mideast milk marketing area. The witness opposed the proponent's position that the proposal be considered on an emergency basis.

A witness appearing on behalf of the Milk Industry Foundation (MIF) testified in opposition to the Class I price adjustments of DCMA's package of proposals. According to the witness, MIF is a member organization of the International Dairy Foods Association (IDFA) which represents 115 member companies that market approximately 85 percent of the nation's milk and dairy products. The witness testified that the proposed changes are not necessary because an adequate of supply of milk already exists for the Appalachian, Southeast, and Florida orders. The witness stated that because the Federal order system is a national market, milk is available from anywhere in the country. The witness noted over-order premiums compensate those entities who supply the deficit regions. The witness was of the opinion that declining milk production in the southeastern region has been occurring for many years and as such does not warrant an increase in Class I prices.

Accordingly, the witness said, emergency action is not warranted.

The MIF witness was of the opinion that Class I prices cannot be changed in one region of the country without affecting milk marketings in other regions. The witness said that the proposed Class I price adjustments would change the competitive relationships between plants located within and outside of the three southeastern marketing areas. The witness argued that Class I sales would be discouraged because all Class I plants in the three marketing areas would be required to pay a higher price for milk. The witness requested a comprehensive analysis of the national market before adopting the proposed Class I price adjustments.

A witness appearing on behalf of Dean Foods Inc. (Dean) testified in opposition to the proposed Class I price adjustments of DCMA's package of proposals. The witness agreed with testimony of other witnesses indicating the deficit milk supply conditions in the three southeastern marketing areas and the need to increase prices paid to the region's local dairy farmers.

The Dean witness was of the opinion that a comprehensive analysis of the potential impacts of changing the Class I price surface in the three marketing areas had not been conducted. The witness characterized DCMA's package of proposals as containing ''too many moving parts'' that make it difficult to evaluate the impact of the proposed Class I price adjustment features. The witness was of the opinion that Appalachian and Southeast marketing area dairy farmers are in greater need of higher producer prices than dairy farmers in the Florida marketing area and noted that the proposed Class I price adjustments would benefit Appalachian and Southeast marketing area producers the least. In this regard, the witness worried that the prices received by dairy farmers across the southeastern region would be unfairly distributed if the proposed Class I price changes were adopted.

The Dean witness was of the opinion that the proposed Class I price surface and Class I pricing adjustments would change how milk moves to and between plants located within and outside of the three marketing areas. The Dean witness testified that the assumptions used by DCMA in laying the foundation for the proposed Class I price adjustments and Class I pricing structure are flawed. In this regard, the witness noted that the USDA 1999 Final Decision on Federal milk order reform indicated that the cost of hauling raw milk was linear [cost increases as the distance milk is transported increases at a constant rate], but that the cost of hauling packaged milk was nonlinear. Accordingly, the Dean witness argued that the proposed Class I pricing changes could give distributing plants located outside the marketing areas incentive to change their route dispositions in order to become regulated on one of the three marketing orders.

According to the Dean witness, distributing plants located outside the area could become regulated at the expense of plants located in the area. As a result, the witness concluded, Class I revenue generated by out-of-area distributing plants would be returned to dairy farmers located far outside of the three southeastern marketing areas. The witness offered that perhaps the greatest beneficiaries of the proposed Class I pricing changes could be producers located as far away as Illinois and Indiana.

The Dean witness also criticized reliance on Wooster, OH, (located in Wayne County) as a supply area for the southeastern region and being a basis of DCMA's proposed Class I price adjustments. The witness noted while DCMA identifies Wooster, OH, as a supply area for the southeastern region, a Pennsylvania State proceeding held in 2006 indicated the testimony of a DFA witness saying that milk was not available in the Wooster, OH, area to supply Pennsylvania.

The Dean witness offered nine modifications to DCMA's package of proposals. The witness explained that their proposed modifications to the package of proposals would not seek to provide higher Class I prices or change the Class I pricing surface. According to the witness, the Appalachian and Southeast marketing orders' pooling provisions should be identical to those of the Florida marketing order (discussed further below).

*2. Producer Milk—Diversion Limit and Touch-Base Standards*

The DCMA witness testified that the diversion limit standards of the Appalachian and Southeast orders should be identical. According to the witness, diversions to nonpool plants allows for the pooling of milk that is transferred from pool to nonpool plants without milk first needing to be delivered to pool plants. In setting a reasonable limit, the witness was of the opinion that diversion limit standards must take into account reserve supplies needed for Class I use, the balancing needs of the markets, and the seasonality of production.

The DCMA witness testified that milk-deficit Federal orders tend to have lower diversion limit standards relative to orders with substantial reserve milk supplies. The witness testified that while the Appalachian and Southeast order diversion limit standards generally reflect their milk-deficit marketing conditions, they are in need of tightening. Specifically, the DCMA witness proposed that the diversion limit standards be 25 percent during each of the months of January, February, and July through November, and 35 percent for each of the months of March through June and for the month of December.

In explaining the analysis conducted in arriving at the proposed new diversion limit standards for the Appalachian and Southeast orders, the DCMA witness testified that daily producer milk receipts by distributing plants regulated by the two orders from January 2004 through December 2006 were compared to the day of the month when daily receipts at distributing plants were the greatest. The witness explained that the differences between the day of the greatest receipts and each day's actual receipts for the month at distributing plants were then summed. According to the witness, the resulting value represents the amount of additional milk that would need to be pooled as reserve milk to be able to satisfy Class I demands at a distributing plant on the day of their greatest need. The witness stated that the analysis showed that an additional milk volume of 12 to 13 percent of distributing plant receipts would be the minimum reserve necessary to cover daily fluctuations in the demand for fluid milk at distributing plants. On an annual basis, the minimum average reserve needed as calculated is about 22 percent, the witness said.

The witness explained that the proposed diversion limit standards of 25 percent for both orders for each of the months of January, February, and July through November, are based on the analysis described above and the need to provide for an additional reserve in the tightest supply months. The witness explained that the proposed diversion limit standards of 35 percent for each of the months of March through June and the month of December accommodate seasonal fluctuations in supply. The witness explained that this standard would allow regular producers who supply the Class I needs of the marketing areas in the tight supply months to pool all of their additional production in the flush months and accommodate the regular decline in Class I sales that occurs when schools close for the summer months. According to the witness, Class I plants also

temporarily close or severely limit their receiving operations over the holiday period in December resulting in substantial surplus milk.

Relying on market administrator data, the DCMA witness estimated that the impact on the minimum uniform prices from lowering the diversion limit standards alone would raise blend prices approximately $0.02 per cwt and $0.07 per cwt annually for the Appalachian and Southeast orders, respectively. The witness indicated that a change in the blend price for any particular producer would vary based on where the producer's milk was delivered.

The DCMA witness stressed that the proposed changes in the two orders' diversion limit standards do not fully capture the true volume of milk likely to no longer be eligible to be pooled on the two orders. The witness explained that if the volume of producer milk delivered to pool plants were the same each month, then the volume of producer milk no longer pooled and priced by the orders would drop about 6.67 percent and 29.72 percent on the Appalachian and Southeast orders, respectively. The witness further explained that lowering the diversion limit standards also should result in increasing minimum order blend prices paid to producers. According to the witness, proposed changes to the diversion limit standards of the orders, together with expected increases in revenue arising from Class I price adjustments and Class I pricing surface, will likely encourage local milk production, the movement of milk into the region from distant sources, or some combination of both.

The DCMA witness testified that the package of proposals also includes the lowering of the touch-base standards of the Appalachian and Southeast orders and makes them identical. According to the witness, this would discourage uneconomic movements of milk and offer operational savings for cooperatives supplying the Class I needs of the marketing area.

The DCMA witness explained that because of the continuing decline in local milk production, an increasing amount of milk that is produced further from the marketing areas is becoming a regular part of the supply of Class I milk. The witness characterized this milk of distant dairy farmers as the reserve supply needed for balancing the Class I needs of the two marketing areas.

The DCMA witness was of the opinion that reducing the touch-base standard to one day each month in both orders is necessary for the efficient pooling of reserve supplies. The witness testified that lowering the touch-base standard would prevent local milk already supplying the markets' Class I needs from being displaced by milk produced farther from the marketing areas, which is shipped in simply to meet pooling standards. According to the witness, requiring producers to deliver more days to pool plants when the milk is not truly needed results in increasing the cost of supplying the Class I needs of the two markets.

Eight dairy farmers testified in general support of DCMA's proposed changes to the two orders' diversion limit and touch-base standards. Some were of the general opinion that the regular reserve supply for the Appalachian and Southeast marketing areas should be pooled when not delivered to Class I plants. While all supported the pooling of milk that regularly supplies the Class I needs of the two marketing areas, several dairy farmers expressed caution that the diversion limits were not being lowered enough while touch-base standards were needlessly being lowered. According to these witnesses, this would encourage pooling milk not truly supplying the markets and result in lower blend prices paid to local dairy farmers. The dairy farmers testifying supported adopting needed changes on an emergency basis.

A witness representing Dean testified that the proposed changes to the diversion limit and touch-base standards would not be sufficient to deter the uneconomic movement of milk or to enhance producer prices in the Appalachian and Southeast marketing areas. According to the witness, current diversion limit standards are in excess of the markets' balancing needs and should be lowered immediately.

The Dean witness characterized the Appalachian and Southeast orders as being very similar to the Florida order in terms of milk consumption and production. The witness was of the opinion that the pooling standards of the Florida order work well and pooling milk not consistently serving the market's Class I needs rarely occurs. The witness specifically proposed that diversion limit standards be changed to 15 percent for each of the months of December through February, 20 percent for each of the months of March through June, and 10 percent for each of the months of July through November.

According to the Dean witness, dairy farmers will receive higher blend prices if diversion limits are made even lower than proposed by DCMA. Relying on market administrator data, the witness stated that January 2004 had shown the highest ''need'' of reserve milk during 2004–2006 for the Southeast order at approximately 22 percent of total milk pooled on the order. The witness contrasted this with October 2004 when the ''needed'' reserve was approximately 7 percent. In this regard, the witness suggested that diversion limits could be reduced below that proposed by DCMA. According to the witness, if made too low, the market administrator has the authority to change the diversion limit standards if warranted.

The Dean witness opposed DCMA's proposed one day per month touch-base standard if DCMA's proposed diversion limit standards are adopted. The witness was of the opinion that inefficient movements of milk would result if the one day touch-base standard were adopted. However, the witness indicated support for a two-day touch-base standard provided the diversion limit standards of the Florida order are simultaneously adopted.

The Dean witness explained that when touch-base requirements are low, locally produced milk can be displaced by milk located far from the marketing area because it needs to be transported to the marketing area fewer times to qualify for pooling and receiving a higher blend price. The witness was of the opinion that only milk that is necessary to serve the Class I needs of the market should be delivered to that market. According to the witness, reserve milk supplies located far from the market should not be pooled on the market if they are not delivered to the market.

*3. Transportation Credit Provisions*

The DCMA witness explained that on September 1, 2006, the Secretary issued a tentative partial decision (71 FR 54118) which amended the transportation credit provisions of the Appalachian and Southeast orders. Specifically, the witness noted that the decision established a fuel cost adjuster to determine a variable mileage rate factor used to compute the payout of transportation credits and higher maximum transportation credit assessments on Class I milk for the Appalachian and Southeast orders. To accompany these adopted changes that were implemented on December 1, 2006, (71 FR 62377) the witness proposed four other changes to the transportation credit provisions that are part of the package of changes proposed for the two southeastern orders.

According to the DCMA witness, the four additional changes to the transportation credit provisions for both orders include: (1) extending the months during which transportation credits may be paid to include the

months of January and February with June being an optional transportation credit payment month; (2) expanding the payment of transportation credits to apply to the full load of milk, rather than the current calculated Class I portion of milk loads; (3) providing greater flexibility for supplemental milk producers to be eligible to receive transportation credit payments; and (4) raising the maximum monthly transportation credit assessment for the Southeast order from the current $0.20 per cwt to $0.30 per cwt.

According to the DCMA witness, the need for supplemental milk in the Appalachian and Southeast orders has increased during the months of January and February. The witness offered evidence showing that during January 2004 through December 2006, January and February are months with increasing Class I use in the Appalachian and Southeast orders. The witness claimed that during January and February, local milk is not sufficient to supply the Class I milk needs. It is this combination of Class I need and available local producer supplies that show January and February as being more like the current transportation credit payment months of July through December than the flush months of March through May, the witness concluded. According to the witness, adding January and February as transportation credit payment months would give suppliers of supplemental milk an opportunity to recoup a portion of the hauling costs to supply the marketing areas with milk for fluid use.

In explaining this proposed change, the DCMA witness said, in part, current transportation credit payment provisions result in reimbursements that are much lower than the real cost of hauling. The witness explained that the cost of hauling milk to Class I plants is the same regardless of the plant's use or the Class I utilization of the market. The witness was of the opinion that expanding the transportation credit payments to full loads of milk delivered only to pool distributing plants would enhance orderly marketing and better ensure that sufficient supplemental milk is delivered to pool distributing plants. The witness supported continuing transportation credit payments on supplemental milk deliveries to pool distributing plants only.

The DCMA witness proposed simplifying the process for determining what supplemental milk is eligible for transportation credit payments. The witness noted that currently, a dairy farm must be located outside either the Appalachian or the Southeast marketing areas, the dairy farmer must not meet the *Producer* provision under the two orders during more than two of the immediately preceding months of February through May, and not more than 50 percent of the dairy farmer's milk production during those two months, in aggregate, can be received as producer milk under the order during those 2 months.

The DCMA witness was of the opinion that the requirements for transportation credit payment eligibility should be changed to provide flexibility in meeting the criteria while limiting the receipt of transportation credits to only that milk which is truly supplemental and that is not part of the consistent and regular supply of milk serving the Class I needs of the two markets. Specifically, the witness proposed that: (1) A dairy farmer must not meet the *Producer* definition on the orders in more than 45 of the 92 days in the months March through May, or (2) a dairy farmer must have less than 50 percent of their producer milk pooled on the orders during those 3 months combined. The witness argued that limiting the producer association with the orders to no more than half the time or to no more than half their milk production is sufficient to identify a dairy farmer as a supplemental supplier of milk to the marketing areas. These changes, the witness asserted, offer substantial cost savings to cooperatives that bear the burden of sourcing and supplying the supplemental milk needs of the markets from distant locations.

The DCMA witness testified that the maximum transportation credit assessment for the Southeast order needs to be increased from the current $0.20 per cwt to $0.30 per cwt given the proposed expansion of the transportation credit payments on full loads of milk to Class I distributing plants regulated by the two orders. The witness was of the opinion that otherwise the current assessment rate would be insufficient to cover anticipated shortfalls in the transportation credit balancing fund.

While the DCMA witness proposed a higher transportation credit assessment rate for the Southeast order only, the witness projected that the proposed changes to Class I prices and the Class I pricing surface in the Appalachian and Southeast orders would lessen payments from the transportation credit balancing funds. The witness explained this may occur because of the greater positive differences (increases) from adopting the proposed Class I price adjustments and Class I pricing surface. The witness did acknowledge that the additions of the months of January and February as transportation credit payment months would tend to increase transportation credit payouts.

Relying on market administrator data, the DCMA witness estimated that for the months of July through December 2006 the Southeast order transportation credit payments would total $15,704,872 as a result of their proposal, and January and February 2006 payments would total approximately $2,900,000, resulting in an overall amount of approximately $18,604,872. At the current assessment rate of $0.20 per cwt, the witness concluded that transportation credit balancing funds would not have been sufficient to pay all transportation credit claims in 2006. At the proposed $0.30 per cwt assessment rate, the witness was of the opinion that sufficient revenue would be generated to satisfy all transportation credit claims.

Relying on market administrator data for the Appalachian order, the witness said that during July 2006 through January 2007, transportation credit payments would have totaled approximately $4,073,312. According to the witness, February 2006 would have included a payment of approximately $313,000, bringing the total estimated transportation credit payments to $4,383,312. According to the witness, the current $0.15 per cwt assessment rate for the Appalachian order would have been sufficient and no increase in the assessment rate would be needed.

The DCMA witness supported continuing to provide for market administrator discretion in setting the transportation credit assessment rates at less than the maximum allowed. The witness was of the opinion that doing so will prevent the needless collection of revenue when the transportation credit balancing funds are sufficient to meet claims.

Four dairy farmers testified in support of DCMA's proposal to provide additional flexibility in determining which producers are supplying supplemental milk to the two marketing areas. As with other features of DCMA's proposals, these dairy farmers supported adoption of these proposed changes on an emergency basis.

The witness appearing on behalf of Dean expressed support for adding the months of January and February as transportation credit payment months for the Appalachian and Southeast orders on the condition that tighter diversion limits be adopted. The witness said these months should be considered as payment-eligible months because the tentative decision implemented in December 2006 eliminated the ability to divert milk on loads of milk seeking the payment of a transportation credit. However, the

Dean witness opposed expanding transportation credit payment eligibility to entire loads of milk. In this regard, the witness expressed concern that this would essentially result in Class I sales funding the supply of supplemental milk in lower-valued Class II uses.

*4. Administrative Assessment Rate*

According to the Assistant Market Administrator for the Appalachian order, Proposal 4 was offered to ensure that sufficient funds are available for administering the Appalachian order. The witness added that Proposal 4 would amend section 1005.85 (7 CFR 1005.85) to provide for all of the administrative assessment language pertinent to the Appalachian order provisions and would discontinue the reference to section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating costs include administrative, accounting, human resources, economic, pooling and audit staff expenses.

The Assistant Market Administrator for the Appalachian order stated that the market administrator is required to maintain a specific level of operating reserves. The reserve level, the witness said, must be maintained in the event that an order is terminated and would fund the necessary costs for closing out an order, completing pools and audits and paying severance and leases. The reserve level is detailed in the MA Instruction 207 that is issued by the Dairy Programs Deputy Administrator, said the witness.

The Assistant Market Administrator for the Appalachian order said that the majority of the administrative assessment revenue comes from pooled producer milk. Additionally, the witness said, assessments are also collected on other source receipts assigned to Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that although the maximum administrative assessment rate allowable on pooled producer milk is $0.05 per cwt, the rate currently collected each month is $0.04 per cwt, which has remained unchanged since January 2000.

The Assistant Market Administrator for the Appalachian order said that during 2000–2002, producer milk pooled on the Appalachian order averaged 547 million pounds per month. According to the witness, the $0.04 per cwt assessment rate at this volume of milk created enough revenue to fund Appalachian order operations and maintain the mandated operating reserve. The witness stated that from 2003–2005, producer milk pooled on the order averaged 525 million pounds per month and in 2006, producer milk pooled on the order averaged 520 million pounds per month. The witness also compared the first 4 months of 2007 to the first 4 months of 2006 and stated that producer milk pooled on the order was down 3.45 percent.

The Assistant Market Administrator for the Appalachian order explained that about $215,000 is needed each month to cover basic operating expenses. By keeping the assessment rate of $.04 per cwt, the witness said 538 million pounds of producer milk would be needed each month to cover monthly order expenses. The witness further explained that the Appalachian order was in an operating deficit in 2003, 2004, and 2006 and had a balanced budget in 2005. During 2003–2006, the witness said, the volumes of pooled producer milk did not generate sufficient revenue to fund order operations and lowered the mandated operating reserves.

According to the Assistant Market Administrator for the Appalachian order, a decision effective December 1, 2006 (71 FR 62377), established a zero diversion limit standard on Class I milk receiving transportation credits. The decision, the witness said, reduced the amount of milk that could be pooled on the order and reduced the amount of assessment revenue collected during the period of July through December, when those volumes of milk would be pooled. In addition, the witness said that Proposal 1, if adopted, would add January and February as additional transportation credit payout months, further reducing the amount of milk that could be pooled on the Appalachian order. The witness stressed that tightening pooling provisions of the order impacts the amount of producer milk pooled on the order. The witness expressed concern that less milk pooled on the order would reduce administrative assessment revenue and the ability to fund order operations while maintaining the mandated reserve level.

The Assistant Market Administrator for the Appalachian order said that the market administrator makes efforts to control costs of carrying out order operations. According to the witness, cost control efforts include a reduction of office staff by 29 percent through attrition since January 2003, contracting with outside computer services, negotiating a telecommunications contract, consolidating a field office, and reducing travel and mail expenses. The witness stressed that regardless of the market administrator's efforts to control costs and efficiently administer the order, gains in efficiency cannot make up for revenue lost due to a reduction in milk volumes.

The Assistant Market Administrator for the Appalachian order concluded by emphasizing that increasing the maximum administrative assessment rate to $.08 per cwt would be the maximum rate allowable and not necessarily the rate assessed. The witness said the actual rate assessed would only be as high as determined by the market administrator with approval by the Dairy Programs Deputy Administrator.

According to the Market Administrator for the Southeast and Florida orders, Proposals 5 and 6 were offered to ensure that there are sufficient funds to carry out administration of the orders. The witness said the proposals would amend sections 1006.85 (7 CFR 1006.85) and 1007.85 (7 CFR 1007.85) to provide for all of the administrative assessment language pertinent to the Southeast and Florida orders, and would discontinue the reference to section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating expenses of the order include pooling, auditing, and providing market information.

The Market Administrator for the Southeast and Florida orders explained that the order is required to maintain a specified level of operating reserves. The reserve level, the witness said, is detailed in the MA Instruction 207 that is issued by the Dairy Programs Deputy Administrator. The witness said the reserve level is kept to cover necessary costs of closing out an order, such as completing pools, audits, and paying severance and lease payments.

The Market Administrator for the Southeast and Florida orders explained that the majority of the monthly administrative assessment is collected from pooled producer milk. The witness added that additional assessments are also collected from other source receipts associated with Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that the market administrator largely depends on the administrative assessment revenue to fund the operations of the orders. The witness noted that since 2000, the administrative assessments for both the Southeast and Florida orders have contributed over 80 percent of the total income of the market administrator office.

According to the Market Administrator for the Southeast and Florida orders, the combined monthly average of pooled producer milk for the two orders in 2000 was 862.8 million

pounds. In 2001, the witness said, the combined monthly average of producer milk pooled in both orders was 878.4 million pounds and in 2002, the combined monthly average was 885.0 million pounds. The witness said that during 2000–2002, the assessment rates charged in the Southeast and Florida orders of $0.035 and $0.03 per cwt, respectively, along with the volume of producer milk, were sufficient to fund order operations and maintain the mandated reserve funds.

The Market Administrator for the Southeast and Florida orders said that in 2003, although producer milk in the Florida order increased by 5 percent, producer milk in the Southeast order decreased 11 percent, resulting in a considerable decrease in assessment collections. According to the witness, during 2003, funds were drawn from the operating reserves, reducing the reserve level near the mandated minimum. The witness said that as a result, effective with January 2004 milk deliveries, the administrative assessment rates increased by $0.01 to $0.045 and $0.04 per cwt for the Southeast and Florida orders, respectively.

The Market Administrator for the Southeast and Florida orders stated that in 2004, the monthly average pounds of producer milk pooled increased over 2003 by 1 percent and 5 percent in the Southeast and Florida orders, respectively. The witness added that in 2005, producer milk increased over 2004 by 5 percent and 8.8 percent in the Southeast and Florida orders respectively, and in 2006, producer milk increased over 2005 by 6.8 percent and stayed the same in the Southeast and Florida orders, respectively.

According to the Market Administrator for the Southeast and Florida orders, the administrative assessments implemented in 2004, with the increase in producer milk during 2004–2006 and efforts to control costs, have been sufficient to cover operating expenses and build an adequate reserve level. The witness added that they continue to take measures to control costs. The witness said that from 2000–2006, cost control measures included a 15 percent reduction in staff through attrition, increased use of technology to hold meetings and conduct audits, a reduction in travel expenses, and a decrease in communication costs.

The Market Administrator for the Southeast and Florida orders explained that Proposal 2 seeks to limit an average of 12.3 percent of allowable diversions in the Southeast order which would reduce the amount of milk pooled on the order, as well as the value of administrative assessments used to fund order operations. The witness also noted a decision effective December 1, 2006, (71 FR 62337) that reduced allowable diversions by the volume of transportation credit claims. The witness also expressed concern that the downward trend in Southeast milk production and marketing decisions made by handlers provides an increased potential for variability in the revenue available for order operations.

The Market Administrator for the Southeast and Florida orders concluded that while the proposals seek to increase the maximum assessment rate from $0.05 per cwt to $0.08 per cwt, the $0.08 per cwt would not necessarily be the rate charged. The witness stressed that the assessed rate would only be high enough to cover operating expenses and maintain the mandated reserve level as approved by the Deputy Administrator for Dairy Programs.

**Post-Hearing Briefs**

Post-hearing briefs were filed by: Dairy Cooperative Marketing Association (DCMA), Southeast Producers Steering Committee (SPSC), Dean Foods Company and National Dairy Holdings (Dean/NDH), and the Milk Industry Foundation (MIF).

The DCMA post-hearing brief echoed the association's support for adoption of their proposals on an emergency basis. The brief stated that its proposals were developed as an integrated package and that the package of proposals better assures the Appalachian, Southeast, and Florida milk orders' ability to attract a sufficient quantity of milk for fluid use. The brief said this is accomplished by increasing the Class I prices in the three milk marketing orders, lowering the diversion limit and touch-base standards, and modifying the transportation credit provisions. The brief reiterated the deficit milk supply situation in the southeastern region. The brief emphasized that procuring milk for Class I use for the region is a major challenge that is borne disproportionately by cooperative associations and their dairy farmer members.

The DCMA brief explained that the proposed Class I price adjustments and changes to the Class I pricing surface in the Appalachian, Southeast, and Florida orders would accomplish two needed results. According to the brief, the changes would likely encourage local producers to increase milk production *and* provide pricing incentives for producers located outside the marketing areas to deliver milk to the three marketing areas for fluid use.

The DCMA brief stated that, while plant price relationships would inevitably change as a result of its proposals, the Class I prices proposed are strikingly similar to plant price differences adopted in the 1999 Order Reform final rule. The brief indicated that this is proof that its method of developing the proposed Class I price adjustments and Class I pricing surface is valid and meets the requirements of a regulated Class I price system.

The DCMA brief commented on the method used in developing its Class I pricing proposals as deviating from a model developed by Cornell University that was relied upon in the adoption of current Class I pricing structure. The brief addressed opponent arguments that the cost of shipping bulk versus packaged milk follows distinct cost equations and, therefore, different cost curves. According to the brief, the marginal costs involved in shipping bulk milk long distances (over 900 miles) are still greater than zero and subsequently do not invalidate their proposed pricing structure. The brief characterized the proposed Class I pricing portion of the proposal package as containing all the elements used by the Department in the current Class I pricing structure. The brief also argued that DCMA's proposals generate Class I pricing relationships consistent with the objectives of marketing orders in assuring an adequate supply of milk for the three marketing areas, not encouraging the uneconomic movement of milk, and being reflective of the supply and demand conditions for milk within the marketing areas.

The DCMA brief explained that lowering the diversion limit standards in the Appalachian and Southeast orders would serve to enhance producer blend prices while the decrease in the producer touch-base standard would act to encourage more efficient milk movements and offer cost savings to milk suppliers. The brief maintained that while some witnesses testified in support of even lower (tighter) diversion limits, no evidence to support such changes was presented. The brief added that diversion limit standards in both orders will effectively be much lower than the proposed standards because no diversions may accompany supplemental milk pooled on the order which receives a transportation credit payment. The brief also noted that DCMA's proposal for extending transportation credit pay-out months also effectively lowers pooling milk by diversion.

The DCMA brief stated that extending the payment of transportation credits to include the months of January and February and to the entire loads of milk would offer the suppliers of

supplemental milk greater assurance that more of the actual costs of hauling milk to the southeastern region would be covered. According to the brief, simplifying the criteria that determines if producers are supplemental suppliers of milk to the marketing areas offers both administrative and marketing efficiencies. Finally, the brief explained that the proposed increase in the transportation credit assessment for the Southeast milk order will ensure that transportation credit payment claims are adequate to meet anticipated needs.

The DCMA brief maintained that the record contains abundant evidence supporting the existence of emergency conditions in the three marketing areas affecting the ability to adequately supply fluid milk. The brief stressed that providing adjustments for higher Class I prices and modifying the Class I pricing surface, if even on a temporary basis, is necessary immediately. The brief indicated that milk production in the Southeastern states during the first quarter of 2007 declined at a faster rate than the annual decline during 2006 and 2005, and that this increasing rate of milk production decline cannot be ignored. The brief reiterated the continuing increases in hauling costs and the longer distances milk must be shipped to provide sufficient supplies to meet fluid demands.

A post-hearing brief was submitted on behalf of SPSC. The SPSC brief indicated support for the Class I portions of DCMA's proposals but was not fully supportive of the proposed diversion limit standards, touch-base standards, and transportation credit provisions. The brief agreed with the DCMA proposals to increase Class I prices in the Appalachian, Southeast, and Florida orders on an emergency basis because it would promote milk production within the three marketing areas by enhancing local producer income—the primary suppliers of fluid milk for the three southeastern markets. The SPSC brief did express concern that even with expected higher blend prices to producers accruing from higher Class I prices, the current trend of lower local milk production may not be slowed.

The SPSC brief indicated support to lower (tighten) diversion limit standards in the Appalachian and Southeast orders. However, the brief expressed the opinion that diversion limit standards for both orders could and should be reduced more than that proposed by the DCMA. The SPSC brief asserted that record evidence had not determined the appropriate base and reserve milk supply volumes, the proper diversion limit and touch-base standards for the Appalachian and Southeast orders, or who should bear the costs of maintaining reserve milk supplies for the Southeastern region.

The SPSC brief was of the opinion that record evidence also did not clearly indicate that the volume of milk pooled on the orders for other than Class I use actually would be lowered by adopting DCMA's proposed diversion limit and touch-base standards. According to its brief, the majority of the producer milk removed under the DCMA proposals would be unavailable in only a few months of the flush production months for the Appalachian order and in the months of January and February for the Southeast order. The brief expressed concern that milk could actually be added in both orders in the other months due to the decrease in the touch-base standard. The brief maintained that in-area producers and those who provide the primary supply of milk for fluid use on a regular basis should receive the greatest share of revenue attributable to that service. According to the brief, pooling more milk than needed would only continue to depress the income of Southeastern producers.

The SPSC brief found agreement with Dean's testimony that proposed a more aggressive lowering of diversion limit standards for the Appalachian and Southeast orders. The brief agreed with Dean's position that tighter diversion limits would sharply reduce the volumes of pooled milk in the two orders and the relative impact on producer pay prices would be more substantial. The brief indicated support for continuing to provide discretionary authority for the market administrators to tighten diversion limits and raise touch-base standards if necessary and without the need to resort to the formal rulemaking process.

The SPSC brief indicated conditioned support for DCMA's proposed changes to the transportation credit provisions of the Appalachian and Southeast orders. However, the brief questioned the proper role of transportation credits in both marketing orders. The brief requested the Department consider the proper levels of producer delivery day requirements, diversion limits, and transportation credit provisions to achieve the stated goals of the DCMA package of proposals.

A post-hearing brief submitted on behalf of Dean and NDH (Dean/NDH) agreed that the Southeastern region of the U.S. is a deficit milk production region and that the deficit is growing. The brief said that dairy farmers who regularly and consistently supply milk to fluid milk plants in the southeastern region should be appropriately compensated for their raw milk and receive the blend price of the order they supply. However, the brief argued that adopting the proposed Class I price adjustments and the Class I price surface proposals is not supported by record evidence or by rule of law and should be denied. While the Dean/NDH brief expressed agreement that long-term problems exist regarding the viability of the southeastern region dairy industry, it doubted that correcting problems that have prevailed for 25 years could be solved overnight through emergency rulemaking.

According to the Dean/NDH brief, there is no evidence of an emergency that would warrant adopting the Class I price proposals by the omission of a Recommended Decision. To the extent that conditions warrant the need to rely on milk orders to return higher prices to dairy farmers, the brief asserted that an alternative method of returning higher prices can be achieved by simply lowering the orders' diversion limit standards. The Dean/NDH brief noted that Dean and NDH operate several fluid milk processing plants in the Southeastern region and that other processors testifying at the hearing opposed the Class I price adjustments and Class I pricing surface changes. The brief argued that such changes may have unintended consequences which may worsen the situation in the southeastern region. According to the Dean/NDH brief, adopting changes to Class I pricing may create incentives for plants located outside the Appalachian and Southeast marketing areas to direct their fluid milk sales in the marketing areas and become pooled on those orders. The brief argued that while plants may gain in blend price changes by altering where they become pooled, the price surface may not change for their competitors. The brief also asserted that since January 2000, Class I prices were intentionally linked nationwide as part of Federal milk order reform and concluded that any change in Class I differentials or the Class I price surface, even at one price location, would change the economic incentive nationwide to serve that location. The brief therefore contended that the entire national Class I price surface needs to be evaluated.

According to the Dean/NDH brief, DCMA's Class I price proposals fail to rely on accepted economic models and fail to follow the Department's established policies for making adjustments to the Class I price surface. Specifically, the brief argued that the economic calculations failed to take into consideration ''shadow pricing,'' which the brief characterized as how a market could react to changes such that an

additional price change would alter distribution. The brief also argued that the Class I price proposals fail to calculate unique prices for each location by considering relevant reserve supply areas and fail to account for differences in raw milk movements versus packaged milk movements.

According to the Dean/NDH brief, the rationale for setting a target price for Miami, FL, and then backing off that price and ''smoothing'' the result is arbitrary and capricious. The brief contended that determining Class I prices in this way applied non-uniform methodology and did not meet the standards of the Administrative Procedure Act. In addition, the brief noted that no evidence or economic data backs up the ''smoothing'' process as described by DCMA testimony.

The Dean/NDH brief asserted that Wooster, OH, should not be identified as a supply area because it has never been relied upon as any kind of basing point for pricing milk and doing so now would be specifically contrary to testimony given at a Pennsylvania State hearing for a recent State of Pennsylvania rulemaking. Accordingly, the brief contended that DCMA's entire Class I pricing proposals should be rejected.

According to the Dean/NDH brief, although the Class I price changes sought are ''temporary,'' competitive impacts of such changes can be long-term and result in permanent harm to Class I handlers. The brief asserted that any decision should be considered permanent unless it has a specific sunset provision. According to the brief, no specific sunset provision had been proposed or discussed in the hearing record.

The Dean/NDH brief pointed out that, at the time of the hearing, the dairy industry was also experiencing record high Class I prices for milk further demonstrating the lack of need for emergency action. The brief noted that the May 2007 uniform price for Fulton County, GA, was $18.37 per cwt. According to the brief, this price is $1.37 per cwt higher than April 2007 and is $5.83 per cwt, or 45.3 percent, higher than in May 2006. The brief also noted that the Class I price for June 2007 at Fulton County was $1.92 per cwt higher than May 2007, and the July 2007 price increased by $3.07 per cwt. The brief indicated that even a proponent witness acknowledged that such higher prices were likely to continue through the fall 2007.

The Dean/NDH brief agreed that diversion limit standards for the Appalachian and Southeast orders should be lowered on an emergency basis and made identical to those of the Florida order. The brief indicated that the Florida order currently functions well by having lower diversion limit standards and this has supported the prevailing over-order premiums. The brief opined that because of the order's tight pooling provisions, the need for transportation credits and the need for holding numerous formal rulemaking hearings has been avoided. According to the brief, the Florida order's tight diversion limit standards have continually assisted that order in retaining strong blend prices paid to dairy farmers and attracting sufficient amounts of milk supplies.

The Dean/NDH brief asserted that pool revenues should be shared only among those producers who truly and regularly serve the Class I market and that diversion limit standards of the Appalachian and Southeast orders are not adequately identifying those true and regular suppliers. The brief asserted that both orders can be made more effective by requiring a genuine association of a milk supply with the market as intended by the AMAA.

The Dean/NDH brief indicated that if Dean's proposal for adopting the diversion limit standards of the Florida order for the Appalachian and Southeast orders is adopted, Dean would support the DCMA's one-day per month touch-base standard proposals. As Dean/NDH does not consider DCMA's proposed diversion limit standards as being any change at all, it opposed any change to the touch-base standards of the Appalachian and Southeast orders.

The Dean/NDH brief opposed the expansion of the payment of transportation credits to include the entire load of milk and stated that payments should only be paid on Class I milk as currently provided under the Appalachian and Southeast orders. The brief expressed concern that adopting the proposed changes would create the wrong economic incentives. The brief noted that suppliers of milk to a Class I plant with a higher than market average of Class II use would be receiving a larger economic benefit than Class I plants with below market average Class II use. According to the brief, this would be contrary to assuring equal minimum milk prices among similar handlers.

The Dean/NDH brief was of the opinion that transportation credits have been a key factor in contributing to the decline of the dairy industry in the southeastern region. In this regard, the brief noted the proponents acknowledgement that in some cases current touch-base provisions in conjunction with transportation credits cause inefficient movements of milk. The brief asserted that transportation credits, not touch-base standards, give rise to inefficient movements of milk.

A post-hearing brief by MIF reiterated its opposition to adopting DCMA's proposals and asserted the absence of emergency marketing conditions that warrant emergency action. The brief noted awareness of declining milk production in the southeastern region but indicated this is not a sufficient basis for the adoption of the proposals on an emergency basis. The brief further argued that no emergency exists to warrant adoption of the proposals because the trends of declining milk production in the region and rising fuel costs have existed for many years.

The MIF brief stressed that the key purpose of the Federal milk marketing order program is to ensure an adequate supply of milk for Class I needs. In this regard, the brief noted that no witnesses testified on the inability to procure milk for Class I use. The brief reiterated that in a survey of its membership conducted before the hearing, no member indicated difficulty securing milk for Class I needs in the three southeastern marketing areas. The brief also mentioned that over-order premiums are paid by Class I handlers to secure milk for fluid use and the proponents testified that current over-over premiums currently offset higher fuel costs.

The MIF brief noted that some southeastern dairy producers who testified at the hearing also participated in a herd-removal program called Cooperatives Working Together (CWT). In this regard, the brief cited this as an example of misplaced concern for declining milk production in the southeastern region.

The MIF brief asserted Class I sales would suffer if higher Class I prices were adopted because higher raw milk costs would increase wholesale costs and result in higher retail prices paid by consumers. The brief noted that the current, general structure of Class I location differentials has been in place for 22 years and that milk bottlers have made significant investments in plants and equipment during this time.

According to the MIF brief, plants could be disadvantaged in the marketplace solely because of increases in the Class I price relative to the Class I price of its competitors. The brief argued that a $0.005 difference per gallon could result in lost customers for a distributing plant and that a $0.025 increase is enough to lose a supermarket account. The brief asserted that increasing a Class I price by $0.10 per cwt ($0.0086 per gallon) could yield

dire results for a Class I plant. The brief indicated that an unexpected consequence could be that plants distant to the three orders could become associated with one of the three orders due to differences between transportation costs and increased Class I prices resulting in out-of-area plants taking away sales from in-area plants.

The MIF brief said that a comprehensive study and analysis on a national scale of all potential consequences and on demand for packaged milk was needed before any changes to Class I pricing were adopted. The brief reasserted the opinion that Class I prices could not be changed in the southeastern region alone because that would change marketing conditions in all marketing areas.

A post-hearing brief submitted on behalf of DCMA expressed support for the market administrator assessment increase for the Appalachian, Southeast, and Florida milk orders in Proposals 4, 5, and 6, respectively.

**Comments and Exceptions**

Comments and exceptions to the tentative partial decision (73 FR 11194) were filed by Dairy Cooperative Marketing Association, Inc. (DCMA), Arkansas Milk Stabilization Board (AMSB), Southeast Producers Steering Committee (SPSC), Dean Foods Company and National Dairy Holdings (Dean/NDH), and the Milk Industry Foundation (MIF).

In comments and exceptions regarding the adopted Class I price surface, DCMA wrote that the amended Class I differentials will send appropriate signals to maintain and increase milk production within the three marketing areas, as well as create incentives to increase the movement of supplemental milk to these areas when needed. DCMA also expressed agreement that the Class I price surface changes will generate producer price increases in all three marketing areas. DCMA reiterated that the reduction in the volume of diverted milk in the Appalachian and Southeast marketing areas should also lead to increased uniform prices in those marketing areas. DCMA predicted that decreases in the touch-base standard will offer greater flexibility in moving pooled milk and will offer cost savings on pooled reserve supplies. Lastly, DCMA supported USDA's decision to maintain and update the transportation credit balancing fund provisions.

Comments and exceptions filed on behalf of the AMSB expressed support for the tentative partial decision, but proposed additional changes to Class I price adjustments for certain county locations in Arkansas. AMSB requested that the Class I differentials for Pulaski county be increased from $2.80 to $3.20 per cwt, Sebastian county from $2.80 to $3.10 per cwt, and Washington and Benton counties from $2.60 to $3.00 per cwt. AMSB also proposed that the touch-base standard be changed from 2 days for each of the months of July through December and to 6 days for each of the months of January through June. According to AMSB, significant decreases in milk production in Arkansas, as well as in Mississippi and Louisiana, are due, in part, to the Federal milk marketing orders. AMSB was of the opinion that their proposed changes are needed to stabilize dairy production in the State of Arkansas.

Comments and exceptions filed on behalf of the SPSC expressed support for adjusting the Class I price surface in each of the three marketing areas but asserted that the price adjustment increases adopted in the tentative partial decision will not sufficiently increase local milk production in the three marketing areas. SPSC reiterated a number of positions given in record testimony and brief: (1) lowering the touch-base standards will have a negative impact on milk prices and production in the three marketing areas, (2) changes to the transportation credit balancing fund provisions will encourage unnecessary milk movements to the detriment of producer mailbox prices in the Appalachian and Southeast marketing areas, and (3) milk produced on farms located far from the marketing areas will seek to capture higher transportation credit payments by taking advantage of the lower touch-base standards along with the extension of transportation credit eligibility on the full loads of milk.

Comments and exceptions filed on behalf of Dean/NDH expressed opposition to the tentative partial decision by reiterating its positions given in record testimony and post-hearing brief: (1) USDA has deserted utilizing a nationally coordinated pricing surface for Class I milk; (2) current economic conditions demand a nationally coordinated price surface; and (3) abandonment of a nationally coordinated Class I price surface does not follow the requirements of Administrative Procedure Act (APA) or the Agricultural Marketing Agreement Act (AMAA). Similarly, Dean/NDH comments and exceptions also continued to criticize the method used to create the Class I price surface adjustment.

Comments and exceptions filed on behalf of the MIF reiterated its opposition given in record testimony and post-hearing brief to adjusting the Class I price surface in the Appalachian, Southeast, and Florida Federal milk marketing areas and USDA's conclusion to implement the proposed changes on an interim basis. According to MIF's comments and exceptions, increasing Class I prices and adjusting the Class I price surface will not solve the problem of covering procurement costs of fluid milk. MIF asserted that over-order payments are already used to compensate cooperatives that bear the costs of balancing the supply and that increasing Class I prices will only increase costs for processors, retailers and consumers and discourage Class I sales.

No comments and exceptions were received regarding the proposed increase in the maximum administrative assessment for the Appalachian, Southeast, and Florida orders.

**Discussion and Findings**

The record of this proceeding reveals that for many years milk production has declined in the southeastern region and supplying the region with supplemental milk has demanded the sourcing of milk supplies from ever farther distances from the marketing areas. Not only has the decline in milk production been in absolute terms, but when balanced with population increases, milk production in the region has failed to satisfy fluid demands year-round.

The proposed amendments in this proceeding to the Appalachian, Florida, and Southeast milk marketing orders aim to assure an adequate supply of milk for fluid use in the southeastern region of the U.S. As proposed by DCMA, the amendments to the three marketing orders seek simultaneous changes with the aim of providing incentives for assuring a reliable supply of milk for fluid use. The amendments integrate: (1) Higher regulated minimum prices for Class I milk, (2) changes to assure that the revenue accruing from higher minimum Class I prices will be shared with those producers who regularly and consistently serve the region's Class I needs of the region, (3) cost savings for entities who have made the commitment to supply the region, and (4) flexibility and incentives for supplying the Appalachian and Southeast marketing areas with supplemental milk by offsetting the cost of transportation.

**Class I Prices and Class I Price Surface**

Adjustments to the Class I prices for the three southeastern orders continue to be proposed for adoption in this final decision and result in a change to the Class I price surface. The changes are

specified in the order language. Assuming no other changes to the three southeastern orders, increasing Class I prices will continue to increase Class I prices as provided for in the interim rule and increase the value of each order's marketwide pool. The higher Class I prices also will attract milk to all locations and increase blend prices for dairy farmers whose milk is pooled on the three southeastern milk marketing orders.

The basic foundation for deriving the temporary adjustments to Class I prices begins with DCMA's identification of *potential* supply areas and reliance on the areas to yield the lowest Class I price adjustment based on the farthest point of milk demand. The potential supply point meeting these criteria was Wooster, OH, and the farthest demand point was identified as Miami, FL. After identification of the lowest cost supply and demand point, the distance between these two points was relied upon to determine calculated price adjustments at all other county and parish locations within the marketing area boundaries of the three southeastern orders. The selection of Miami as the farthest point of milk consumption is consistent with recognition in the current pricing structure that Miami is the point with the highest Class I differential resulting in a Class I price designed to attract an adequate supply of Class I milk.

As the proposal indicated, the selection of Wooster, OH, (Wayne County) as a supply point is one of several that were considered by the proponents. The selection of Wooster was made after consideration of other supply points because it would represent the least-cost point from which a milk supply could potentially be sourced from locations in the southeastern region. All other supply points considered would have resulted in much higher Class I price adjustments.

The Class I price adjustment calculated for every county and parish location relies upon a mileage rate factor implemented in December 2006. This factor is further reduced by 20 percent. While this formed DCMA's basic foundation for adjusting Class I prices, it is not the proposed Class I price adjustments at all locations in the southeastern region.

The DCMA's Class I price adjustments differ from those calculated. What the proponents have described as ''smoothing'' of the Class I price adjustments is essentially price alignment. In this regard, it is clear that the adopted Class I price adjustments are different from strictly calculated values. The adopted Class I price adjustments provide reasonable alignment with the current Class I price surface beyond the geographical boundaries of the southeastern orders.

Similarly, DCMA's Class I price adjustments differ from calculated adjustments by adjusting calculated values to correspond to Class I processing plant locations. This establishes pricing zones that are conceptually identical to current pricing zones and assures that similarly situated Class I handlers will have the same minimum regulated Class I prices. Providing similar regulated prices for similarly situated handlers is consistent with the requirements of the AMAA. While conceptually identical, maintaining price alignment with adjoining milk marketing orders together with pricing zones, the adopted Class I price adjustments result in price relationships that are different from those that existed at the time of the hearing. Despite criticism that DCMA's adjustments change price relationships between plants of the same ownership, the key requirement that similarly located plants have similar regulated minimum prices is maintained.

In an effort to examine both the level and the reasonableness of the Class I price adjustments that were zoned and aligned with adjoining orders, DCMA evaluated the cost of shipping packaged milk. According to the record, there are some differences between what the resulting Class I price adjustments would be under the cost analysis of shipping packaged milk. Nevertheless, the similarities between the adopted Class I price adjustment and the cost adjustment analysis of shipping packaged milk are very similar. Since the Class I price adjustment at all locations does not exceed the value of milk at alternative locations, in either bulk or packaged form, the Class I price adjustments are reasonable. Despite criticism in comments and exceptions, this final decision continues to find that this method of evaluating the Class I pricing changes forms a rational basis to conclude that the proposed changes to Class I pricing are reasonable. The adopted Class I price adjustments are presented in Figure 1. While the Class I differentials in the southeastern region are not changed in this decision, the Class I price adjustments are added to the current Class I differentials for illustrative purposes. Figure 1 provides a graphic presentation of the combined value of Class I differentials plus the adjustment values adopted in this decision.

On the basis of a pricing surface alone, the adopted Class I price adjustments will not likely result in the uneconomic movement of milk as asserted by opponents. The adopted pricing surface better reflects the economic conditions affecting the supply and demand for milk in the three southeastern marketing areas by providing greater pricing incentives indicative of actual milk movements and the cost of supplying milk from alternative locations. The adopted Class I price adjustments result in a steeper Class I price surface that correlates with the higher location value fluid milk has in the southeastern region. The location value of milk is higher because of the cost involved in transporting milk to locations in the milk-deficit southeastern region from alternative milk-surplus locations.

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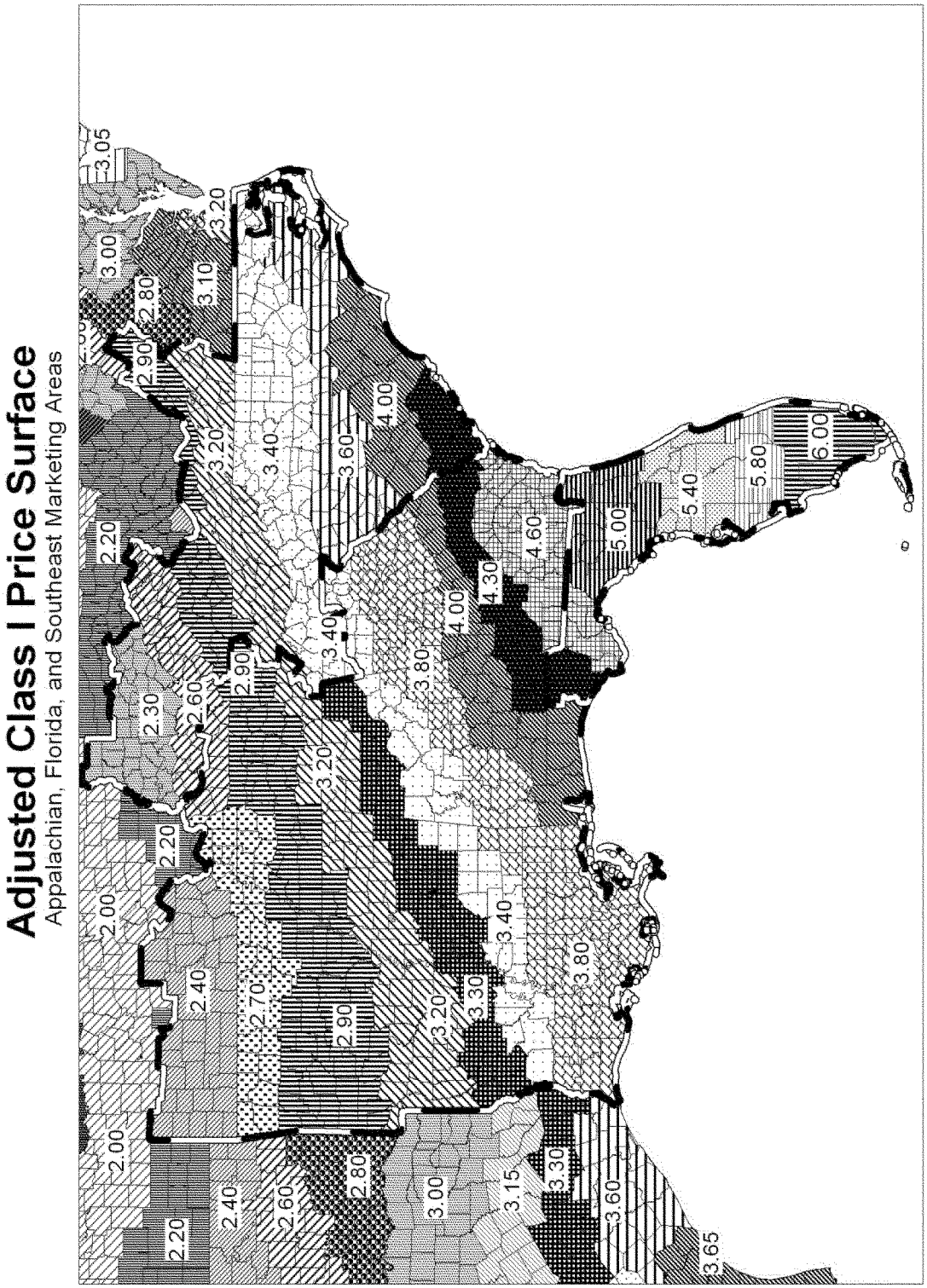


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Opponents to DCMA's Class I price adjustments assert that there is no reason to increase Class I prices because all Class I demands are being met. This decision continues to find that DCMA's proposed adjustments to the pricing provisions of the three orders are reasonable and necessary. The record of this proceeding reveals that it is the cooperative member organizations of DCMA who supply the majority of the Class I needs of the three marketing areas. In making the commitment to supply the fluid needs of the markets, the supplying cooperatives have largely reduced the burden on Class I handlers to source their supply. Similarly, it is the cooperative organizations that provide the service of balancing the three southeastern markets.

Opponents to DCMA's Class I price adjustments noted that there is an adequate supply of milk to meet fluid demands. There is an adequate national supply of milk to meet the national demands for fluid milk. However, in the deficit areas of the southeastern

marketing areas, there must be sufficient incentives provided by the orders to encourage the movement of milk from reserve areas to these deficit markets. In this regard, the location value of milk needs to consider local milk supplies, local demand, and transportation costs. After consideration of comments and exceptions, this decision continues to find that the adopted Class I price adjustments should provide the additional incentives needed to offset some of the costs associated with the decreases in local supply, increases in local demand, and increases in transportation costs.

Opponents criticized DCMA's Class I adjustments by identifying that other means and methods are available which would return greater revenue to dairy farmers instead of increasing minimum prices. Other changes adopted in this decision will, all other things being equal, tend to increase minimum regulated prices paid to producers. However, these changes are founded on the very limited improvement gained from lowering the diversion limit standards of the Appalachian and Southeast orders. In light of the chronic milk deficit conditions of the southeastern region, only higher minimum regulated prices can reasonably generate the additional revenue needed to assure that the Class I needs of the region can be met continuously. According to market administrator analyses, the estimated annual increase of the Appalachian order pool for 2004, 2005, and 2006 resulting from DCMA's proposed Class I price adjustments would have been $19.3 million, $18.6 million, and $18.3 million, respectively. For the Southeast order, the annual pool value increase would have been $16.8 million, $17.1 million, and $17.7 million, respectively. For the Florida order, the annual increase in pool value would have been $36.4 million, $38.3 million, and $39.2 million, respectively. While alternative methods such as a tightening of pooling standards will, among other things, tend to enhance producer revenue to those producers who regularly and consistently supply the market's Class I needs, this alone will not establish minimum regulated prices high enough to attract an adequate supply for chronic milk-deficit marketing areas from alternative distant locations.

Opponents expressed concern about producers in the region being involved with a voluntary producer-funded program known as the Cooperatives Working Together (CWT). CWT is a non-government program that includes a herd retirement program, which reduces the number of cows in the national dairy herd. This decision rejects this argument as it is not germane to the issues at hand. This decision is derived on the basis of record evidence which supports the adoption of the Class I pricing surface.

AMSB, in its comments and exceptions, proposed additional Class I price surface changes for certain counties in Arkansas with the aim of raising local milk production. This decision rejects adoption of the proposed increases for the Arkansas county locations for two fundamental reasons. First, doing so would not result in a reasonably aligned Class I price surface with the current national Class I price surface. Second, the proposed additional increases are based on the narrow objective of raising local Arkansas milk production. It is the purpose of milk marketing orders to set minimum prices that result in an adequate supply of milk for fluid uses. In this regard, it is not important where the milk is produced. A function of the minimum prices set by the orders is to ensure that a sufficient supply of milk will be delivered to where it is demanded. While AMSB's proposed additional Class I price increases for certain Arkansas counties would provide an even greater incentive to deliver milk to those locations, the adjustments are justified with the goal of increasing local milk production. Accordingly, AMSB's proposed Class I pricing increases for certain Arkansas county locations cannot be deemed superior to those of the DCMA proposal that clearly seeks price increases necessary to assure an adequate supply of milk from any source while also maintaining reasonable alignment with a nationally coordinated Class I price surface.

**Diversion Limit and Touch-Base Standards—Appalachian and Southeast Orders**

DCMA's proposed diversion limit and touch-base standards for the Appalachian and Southeast orders continue to be proposed for adoption in this final decision. The proposed changes make the diversion limit and touch-base standards of the two orders identical. Specifically, the proposed diversion limit standards are: (1) 25 percent of deliveries to pool plants during each of the months of January, February, July, August, September, October, and November, and (2) 35 percent in each of the months of March, April, May, June, and December. Both orders' touch-base standards are amended to require at least one day's milk production of a producer be delivered to a pool plant during the month in order for a producer to be eligible to divert milk to nonpool plants.

Based on record evidence, adoption of a one-day per month touch-base standard for both orders and making the diversion limit standards of both orders identical accomplishes three important pooling standard objectives. Specifically, the changes: (1) provide a standard necessary to identify producers supplying the markets' Class I needs, (2) provide the criteria to identify the milk of producers who may be eligible for receiving a transportation credit in supplying supplemental milk for Class I use, and (3) allows milk that is part of the milk supply which regularly and consistently services the markets' Class I needs to be pooled on the orders.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. When producer milk is not needed by the market for Class I use, some provisions should be made for that milk to be diverted to nonpool plants but remain pooled and priced under the order. The lower diversion limits adopted in this decision will likely reduce the volume of milk eligible to be pooled by diversion to a significant degree on the Southeast order and less so on the Appalachian order. Assuming all other conditions being equal, the adopted changes in diversion limit standards will result in higher blend prices paid to producers. This is a desirable outcome, especially for the Southeast order where there is the need to better identify the milk of those producers who regularly and consistently service the Class I needs of the Southeast marketing area. An examination of the Southeast order's utilization of milk belies the fact that the marketing area is chronically short of in-area milk production to meet the Class I demand of the marketing area. This can only be the result of pooling much more milk on the order than is necessary as part of the legitimate reserve supply of milk available to service the Class I needs of the market.

The record reveals that according to market administrator analyses, the estimated impact on minimum order uniform prices of the proposed diversion limit standards in both orders would have average annual increases in uniform prices of $0.02 per cwt for the Appalachian order and $0.07 per cwt for the Southeast order. Increased blend prices will help to provide greater incentives to maintain milk production from current producers and provide greater economic incentives for dairy farmers located outside of the marketing

area to be regular and consistent suppliers of Class I milk to these two marketing areas.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant or cooperative entity pooling milk for its own account. A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant or cooperative acting in its capacity as a handler. With regard to the pooling issues of the Southeast order, the record reveals that current diversion limit standards contribute to the pooling of large volumes of milk on the order that does not regularly and consistently service Class I market needs. Therefore, lowering the diversion limit standard is appropriate to better assure that only milk which regularly and consistently services the Class I market is pooled. Associating more milk than is actually part of the legitimate reserve supply available for Class I use unnecessarily reduces the potential blend price paid to dairy farmers who regularly and consistently service the Class I needs of a marketing area. Not having reasonable diversion limit standards weakens the orders' ability to provide for orderly marketing. Diversion limit standards that are too high can open the door for pooling more milk on the markets than necessary. The record supports concluding that a 33 percent diversion limit for the Southeast order during each of the months of January through June and 50 percent for each of the months of July through December has not only resulted in lower blend prices harming local producers, but has also resulted in Class I utilization rates that obscure that area as a deficit market.

For the Appalachian and Southeast orders, the record reveals that since the average reserve requirements did not differ greatly over the 36 month period (January 2004 through December 2006), having the same diversion limit standards for both orders is justifiable. In addition, by having identical diversion limit standards, the blend prices paid to producers increase as milk is supplied to locations generally in an easterly and southern direction. To the extent that this diversion limit standard may warrant future adjustments, the orders already provide the market administrator authority to adjust diversion standards as marketing conditions may warrant. Given the total milk demands of the marketing areas revealed by the record, a minimum of about 12 to 13 percent of monthly pool distributing plant receipts would be needed to meet the minimum daily, weekly, monthly, and seasonal needs, as well as a modest margin for unanticipated changes in the supply and demand relationship for Class I milk needs. Accordingly, the proposed diversion standards for the orders are reasonable and continue to be proposed for adoption in this final decision.

Touch-base delivery standards define the minimum number of days of milk production each month that a dairy farmer must supply a pool plant of an order to be associated with that market and thus qualify to have their milk pooled by diversion. On the basis of the record evidence, this decision finds reason to support adopting a 1 day touch-base standard for both orders. Conditional supporters have voiced concern for DCMA's package of proposed amendments that lower the touch-base standards of the Appalachian and Southeast order because, they believe, it represents an easing of a feature of the orders' pooling standards at a time when the opposite is needed to improve producer income in the two orders. While this concern might be conceptually valid, it does not consider that the volume of milk pooled on the two orders will be appropriately restricted by the adopted diversion limit standards. In part, because the diversion limit standards of the orders are tightened, an easing of the touch-base standard can be made without fear of pooling the milk of producers who are not part of the regular and consistent supply of milk serving the Class I needs of the two marketing areas.

While diversion limit standards are a key feature of the pooling standards of an order for defining the total volume of milk that can be pooled, an argument could be made that perhaps a touch-base standard is not necessary at all if other pooling standard features are appropriately tailored. However, a touch-base standard for the Appalachian and Southeast orders remains a critical feature of both orders because some criteria are needed to identify producers who are suppliers of supplemental milk to the two marketing areas and who thereby may be eligible to receive a transportation credit.

Record evidence indicates that by reducing the touch-base standard to 1 day per month, producers, especially cooperative member producers who bear the burden of supplying the vast majority of milk to the southeastern marketing areas, would avoid the cost of delivering their milk to pool plants when not necessarily needed. While a higher touch-base standard tends to support the integrity of the orders' performance standards, the current touch-base standards result in the uneconomic movement of milk solely for the purpose of meeting a pooling standard. The current touch-base standards of the two orders too often result in the substitution of local milk with the milk of more distant producers, thus displacing the milk of local producers supplying the market. The milk of local producers needlessly incurs the cost of being transported to more distant locations. As a result of the current touch-base standard, hauling and marketing costs are needlessly higher and the supply of milk from distant producers may still not be available to serve the Class I needs of the two marketing areas.

Despite comments and exceptions received by SPSC and AMSB and for the reasons discussed above, this decision continues to find that the diversion limit standards of the Appalachian and Southeast orders at the time of the hearing resulted in the pooling of more milk than could reasonably be considered as actually serving the markets' Class I needs. Therefore, this final decision continues to support the reduced diversion limits proposed by DCMA. Additionally, the lowering of the touch-base standard, in light of the tightening of the diversion limit standards, does not compromise the integrity of the orders' pooling standards. Together with the adopted diversion limit standards, a lower touch-base standard for the two orders offers operational cost savings to producers supplying the market with Class I milk while simultaneously providing for identification of the milk of those producers who regularly and consistently service the markets' Class I needs.

Until December 2006, the transportation credit balancing provisions of the Appalachian and Southeast orders allowed supplemental milk loads to be used as a platform to pool additional milk on the order through the diversion process. Official notice is taken of the tentative partial decision concerning milk in the Appalachian and Southeast marketing areas issued September 1, 2006, and published September 13, 2006, (71 FR 54118) and the Interim Rule issued October 19, 2006, and published October 25, 2006 (71 FR 62337). In discussing the need for revised diversion limit standards for the Appalachian and Southeast orders it is necessary to consider the findings of that decision.

The September 2006 decision referenced above established a zero diversion limit standard on supplemental milk supplies seeking a transportation credit payment. An

important finding in that decision regarding diversions associated with supplemental milk supplies was that pooling such diverted milk would provide additional revenue to help offset hauling costs not covered by the transportation credit payments then in place for the Appalachian and Southeast orders. The adoption of a variable mileage rate factor that reimburses hauling costs on supplemental milk at a level more reflective of actual costs was found to diminish the need to seek and generate such revenue to offset hauling costs at the expense of the local producers who are regularly and consistently supplying milk for Class I needs. This final decision adopts tighter diversion limit standards, especially for the Southeast order. Together with providing for higher Class I prices, tighter diversion limit standards should result in more orderly marketing conditions. The ability to pool more milk on the orders than the amount needed to regularly and consistently serve the Class I needs of the markets needlessly lowers the blend price of producers who regularly and consistently service such Class I needs.

**Transportation Credit Balancing Fund Provisions**

DCMA's proposed changes to the Appalachian and Southeast order transportation credit balancing fund provisions continue to be proposed for adoption in this final decision. Specifically, these changes include: (1) Extending the number of months that transportation credit balancing funds will be paid to include the months of January and February. The month of June will continue to be a month for the payment of transportation credits if requested and approved by the market administrator; (2) Expanding the payment of transportation credits for supplemental milk to include the full load of milk; (3) Providing more flexibility in determining the qualification requirements for supplemental milk producers to receive transportation credit payments; and (4) Increasing the monthly transportation credit balancing fund assessment rate for the Southeast order from $0.20 per cwt to $0.30 per cwt.

The transportation credit balancing fund provisions for both orders (and predecessor orders) were established in 1996 as a result of the consistent need to import supplemental milk for fluid use during certain times of the year when local production is not sufficient to meet the markets' fluid needs. Specifically, the market administrator applies a monthly transportation credit balancing fund assessment on all dispositions of Class I milk. The assessment rate adopted on an interim basis through a separate rulemaking proceeding (71 FR 62377, published October 25, 2006) was $0.15 per cwt and $0.20 per cwt for the Appalachian and Southeast orders, respectively. At the time of the hearing, transportation credit payments were paid from each order's transportation credit balancing fund during the months of July through December to help offset the cost of transporting such supplemental milk for Class I use. As a result of this proceeding, January and February were added on interim bases as transportation credit payout months effective March 18, 2008 (73 FR 14153). The transportation credit balancing funds operate independently from the producer settlement funds of the two orders. Milk from producers located outside of the two marketing areas who are not part of the regular and consistent supply of Class I milk, is commonly referred to as supplemental milk.

The record reveals that the seasonal swings in milk production lead to inadequate milk supplies for fluid use in certain months and surplus supplies in other months. In the Appalachian and Southeast orders, the summer and fall (and sometimes winter) months are generally considered those months with inadequate (tight) milk supplies for fluid use, while the spring months are generally characterized as having sufficient supplies of milk for fluid use. Transportation credits are used as a method to compensate handlers that provide supplemental milk during the tight supply months by offsetting some of the costs of transporting milk to the two marketing areas.

Prior to the interim final rule issued in this proceeding (73 FR 14153) the payment of transportation credits under the Appalachian and Southeast orders was only made during the months of July through December. A feature of DCMA's proposal seeks to extend such payments to also include the months of January and February. Record evidence demonstrates reliance on supplemental milk supplies for each order's marketing area during July through December and the months of January and February showing similar demand for supplemental milk supplies.

Declining local milk production in the southeastern region of the country is well-known and is a chronic problem. Record evidence indicates milk marketings from dairy farmers located in both the Appalachian and Southeast marketing areas (pooled on any order) has continued to decrease since 2004. Specifically, evidence shows that annual milk marketings pooled on the Appalachian order have decreased from approximately 3.94 billion pounds in 2004 to about 3.77 billion pounds in 2006. For the Southeast order, milk marketings from in-area dairy farmers declined from 5.0 billion pounds in 2004 to 4.76 billion pounds in 2006. Furthermore, record evidence illustrates that total milk production in the southeastern states of the U.S. has declined on average almost 2 percent each year since 1986 and has decreased a total of 34.6 percent since 1986—from 18.29 billion pounds in 1986 to 11.96 billion pounds in 2006.

In each of the years of 2004, 2005, and 2006, the months of July through January were deficit in terms of monthly in-area milk marketings (milk marketed by dairy farmers within the geographical boundaries of the two marketing areas) being consistently less than the monthly Class I producer milk pooled on the Appalachian and Southeast orders. The in-area deficit in January for both orders for all 3 years combined totaled 8.4 million pounds. While February in-area milk marketings for all 3 years exceeded Class I demands, that surplus decreased from over 44 million pounds in 2004 to just under 14 million pounds in 2006—a decrease of over 68 percent.

Record evidence reveals that the months of January and February are likely to become months during which local in-area milk marketings will no longer satisfy Class I demands and the Appalachian and Southeast marketing areas will need to increasingly rely on supplemental milk supplies to satisfy Class I demands. Accordingly, this decision continues to find that expanding the transportation credit payment months to include the months of January and February for the payment of transportation credits is reasonable. June will continue to be an optional month for transportation credit payments, if requested, to be reviewed and authorized by the market administrator.

Currently, transportation credits are paid on loads of milk at the lower of the receiving plant's Class I use or the marketwide Class I utilization. DCMA's proposals seek to change these criteria by having the entire load of supplemental milk eligible to receive a transportation credit. The major justification offered by DCMA is that the cost of transporting supplemental milk, regardless of the plant's use of that milk, is the same. This decision finds that a supplier of supplemental milk sources and assembles milk demanded by distributing plants for fluid uses, but no distributing plant disposes 100 percent of its milk receipts as Class I sales. The supplemental milk supplier does not

know how a receiving plant will use the supplemental milk it receives. However, it is reasonable to conclude that plants do not seek supplemental milk supplies without first having the demand for Class I use. In other words, the need for supplemental milk supplies is fueled by Class I demands that cannot be satisfied in the absence of transportation credits. It is unlikely that supplemental milk suppliers would supply full milk loads to Class I plants if the demand for milk was not at least equal to its Class I disposition, even if it has some actual lower-valued use of milk.

The current calculation of transportation credit payments in the Appalachian and Southeast orders contain a number of features to prevent offsetting the full cost of transporting supplemental milk into the marketing areas. They also contain features to prevent the pooling of milk on the orders that do not regularly and consistently supply the fluid needs of the two marketing areas. Most important is the feature denying the ability to pool milk by diversion on the basis of supplemental milk deliveries to plants in the two orders. Current transportation credit provisions prohibit pooling diverted milk on the Appalachian and Southeast orders on loads of supplemental milk seeking a transportation credit and this prohibition is continued by its adoption in this decision. Since supplemental milk can no longer form a basis from which to pool milk through the diversion process, it is reasonable to conclude that the marketwide Class I utilization percentage of the orders will likely increase. However, this improvement alone will not likely result in offsetting the costs incurred by supplemental milk suppliers who both assemble and transport milk to plants regulated by the two orders to satisfy Class I demands.

Record evidence reveals that the Appalachian and Southeast marketing areas incur different costs in attracting supplemental milk to meet Class I needs. In recent years, the transportation credit reimbursement on claims for the Southeast order has been prorated at greater rates and more often than those of the Appalachian order. As discussed in the September 13, 2006, tentative decision for the Appalachian and Southeast orders (71 FR 54118), the Appalachian marketing area receives the majority of its supplemental milk supplies from the northern Mid-Atlantic States. The Southeast marketing area receives the majority of its supply from the Midwest and Southwest States. The location of supplemental milk supplies for the Southeast marketing area therefore tends to be more distant from the marketing area than for the Appalachian marketing area.

The need to again raise the monthly transportation credit assessment rate for the Southeast order is in part explained by the continuing need of the Southeast marketing area to reach ever farther to source milk supplies to satisfy fluid demands. Additionally, expanding the payment of transportation credits on the entire load of supplemental milk also will likely increase the payment of transportation credit claims. At the same time, payment of transportation credit claims will be partially offset by the adopted changes to the Class I pricing surface because the calculation for determining payment considers the change in Class I pricing values between the origin of supplemental milk and the point where it is delivered. As discussed above, the need for supplemental milk supplies is fueled by the marketing area's Class I demand.

The current transportation credit provisions provide precautionary measures such that the rate of assessments beyond actual handler claims is unlikely. The transportation credit provisions provide the market administrators the authority to reduce or waive assessments as necessary to maintain sufficient fund balances to pay the transportation credits claims. Therefore, increasing the maximum transportation credit assessment rates will not result in an accumulation of funds beyond what is needed to pay transportation credit claims.

The record supports concluding that local milk production is expected to continue declining within both marketing areas. This will result in an even greater reliance on supplemental milk to meet the fluid milk needs of the markets. Record evidence shows a constant increase in both the volume and distance of supplemental milk supplies, especially for the Southeast marketing area. As such, it is reasonable to conclude that future transportation credit claims will increase. In this regard, it is important to prevent exhausting the transportation credit balancing fund before the payment of claims on supplemental milk. Doing so is consistent with the fundamental purposes of the transportation credit provisions.

The adopted increases in Class I prices will likely alter the payout of transportation credit claims because the differences in origin and delivery point Class I prices are increased. However, adoption of expanded transportation credit payment months to include January and February, as well as payments on the entire load of milk, will tend to offset the payout on transportation credit claims resulting from the adopted changes in Class I pricing.

An increase in the transportation credit assessment rate for the Appalachian order was not requested because 100 percent of the transportation credit requests were paid in 2006 and in January 2007. Hearing record data indicates that even with adoption of the proposed Class I prices, pooling requirements and transportation credit provisions, the transportation credit assessment rate of $0.15 per cwt in the Appalachian order should continue to be sufficient to pay future transportation credit requests.

The record indicates that the actual transportation credits paid in 2006 for the Appalachian order totaled $3,313,590. Had the current mileage rate factor (MRF) been in effect for all of 2006, transportation credit payments for the Appalachian order would have totaled $4,433,854, including the actual payment for January 2007 and an estimated payment for February. Analysis suggests that with the current MRF and proposed Class I prices in place, the total transportation credits paid during 2006 would have been about $456,000 less than the actual total transportation credit payments. Using market administrator data with the variable MRF based on 2006 calculated monthly averages ($0.044 per cwt per 10 miles), paying of transportation credit claims on full loads of milk, and the proposed Class I price adjustments, the total transportation credits paid for 2006 in the Appalachian order would have totaled $4,073,312. This is $360,000 less than what would have been paid with the MRF and the lower of a plant's Class I use or marketwide Class I utilization. Accordingly, the current $0.15 assessment rate for the Appalachian order appears to be sufficient to meet all claims even when paying transportation credits on full loads of milk delivered to Class I plants regulated by the order.

The record indicates that the transportation credit balancing fund for the Southeast order has been insufficient to pay transportation credit claims. Record evidence indicates that during 2006, Southeast order transportation credit payments were prorated to 81, 36, 39, and 64 percent of the transportation credit claims for the months of September, October, November, and December, respectively. Such transportation credit claims also have increased in number of pounds and in number of miles. Specifically, the total pounds claimed for the receipt of transportation credits has increased from 374 million pounds for July

through December 2000 to 820 million pounds for July through December 2006—an increase of 119 percent.

Increasing the maximum transportation credit assessment rate for the Southeast order should not result in an unnecessary accumulation of funds. For the Southeast order, the record indicates that transportation credits paid in 2006 would have totaled $15,704,872 for the months of July through December and would have totaled $18,604,872 by including the months of January and February. This analysis is based on using the same MRF of $0.044 as in the Appalachian order analysis, paying of transportation credit claims on full loads of milk, and with the proposed Class I price adjustments. However, the assessment rate of $0.20 per cwt falls far short of the total revenue needed to pay all expected transportation credit claims. Even a $0.30 per cwt assessment may not generate sufficient revenue to meet all expected claims on full loads of supplemental milk. Nevertheless, a $0.30 cwt assessment is more likely to be sufficient to cover all expected transportation credit claims.

Determining those producers eligible to receive a transportation credit on their supplemental milk deliveries requires that the dairy farmer be located outside either the Appalachian or the Southeast marketing areas, the producer must not meet the *Producer* definition of the orders during more than 2 of the immediately preceding months of February through May, and not more than 50 percent of the milk production of the dairy farmer during those 2 months, in aggregate, can be received as producer milk under the order during those 2 months.

DCMA has proposed that these requirements for the Appalachian and Southeast orders be made more flexible without substantially changing the identification of milk that is not a regular part of the supply of milk to the two orders. Specifically proposed is that a dairy farmer must not be a producer on the orders for more than 45 of the 92 days in the months March through May or must have less than 50 percent of the producer's milk pooled on the orders during those 3 months combined. On the basis of record testimony, this change is warranted. Specifically, it represents a change that provides flexibility in identifying supplemental milk producers and may result in lower operational costs to those producers incurring the costs of supplying supplemental milk to the Appalachian and Southeast marketing areas. Additionally, prior to the interim adoption, February was a month used to determine the qualification of supplemental milk producers to be eligible for a transportation credit payment. Since this decision adopts providing for the month of February as a month in which transportation credit payments can be made, it is necessary to redefine the months that a producer may qualify to receive transportation credits on either order.

**Administrative Assessment Increase**

The hearing record reveals that fluctuations in the volumes of milk pooled on the Appalachian, Southeast, and Florida orders can be attributed to a combination of declining milk supplies and the tightening of diversion limits in all three marketing areas. This combination can reduce market administrator revenues to a level too low for the proper administration of the orders while maintaining the mandated reserve level. The adoption of Proposals 4, 5, and 6 will create a more stable revenue stream for the administration of the three southeastern orders.

It is reasonable to increase the maximum administrative assessment rate to $0.08 per cwt in the Appalachian, Southeast and Florida orders to ensure that the market administrators have the proper funds to carry out all of the services provided by the three marketing areas. While the maximum administrative assessment rate is increased to $0.08 per cwt in the Appalachian, Southeast, and Florida orders, the actual rate charged will only be as high as necessary to properly administer the orders and provide necessary services to market participants.

**Conforming Changes**

Conforming changes were made to 7 CFR 1000.50 Class prices, component prices, and advanced pricing factors. Specifically, the Class I skim milk price and the Class I butterfat price provisions were changed to conform to the amendments adopted in this proceeding as provided for in Proposal 7 of the hearing notice. The changes made to 7 CFR 1000.50 (b) and (c) included reference to the adjustments adopted to Class I prices specified in 7 CFR 1005.51(b), 1006.51(b), and 1007.51(b). The conforming changes were presented in the partial tentative final decision (73 FR 11194) and implemented by the interim final rule (73 FR 14153).

**Rulings on Proposed Findings and Conclusions**

Briefs, proposed findings, and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Florida, and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreements and orders:

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

**Rulings on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings, conclusions, and regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents—a Marketing Agreement regulating the handling of milk and an Order Amending the Order regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas, that was approved by producers and published in the **Federal Register** on March 17, 2008 (73 FR 14153) and on May 9, 2008 (73 FR 26513) as an Interim Final Rule and Correcting Amendments, respectively. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered* that this entire decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

**Determination of Producer Approval and Representative Period**

The month of July 2013 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Southeast, and Florida marketing areas is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

**List of Subjects in 7 CFR Parts 1005, 1006 and 1007**

Milk Marketing Orders.

**Order Amending the Order Regulating the Handling of Milk in the Appalachian, Florida, and Southeast Marketing Areas**

This order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

**Order Relative to Handling**

*It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Appalachian, Florida, and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the order amending the orders contained in the interim amendments of the orders issued by the Administrator, Agricultural Marketing Service, on March 12, 2008, and published in the **Federal Register** on March 17, 2008, (72 FR 14153) and as corrected in the correcting amendments issued May 6, 2008, and published May 9, 2008, (73 FR 26513) are adopted and shall be the terms and provisions of these orders.

For the reasons set forth in the preamble, 7 CFR parts 1005, 1006 and 1007 are proposed to be amended as follows:

■ 1. The authority citation for 7 CFR parts 1005, 1006 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

## PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. Section 1005.85 is revised, to read as follows:

### § 1005.85 Assessment for order administration.

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration to the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9 (c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.43(a)(3) and (8) of this chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1005.60(d) and (e) of this chapter; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this chapter.

## PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 3. Section 1006.85 is revised to read as follows:

### § 1006.85 Assessment for order administration.

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration of the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk

products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1007.60(d) and (e) of this chapter; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76(a)(1)(i) and (ii) of this chapter.

## PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 4. Section 1007.85 is revised, to read as follows:

### § 1007.85 Assessment for order administration.

On or before the payment receipt date specified under § 1007.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration of the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) of this chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1007.60(d) and (e) of this chapter; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76(a)(1)(i) and (ii) of this chapter.

[**Note:** The following will not appear in the Code of Federal Regulations.]

## Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § ____ to ____[2] all inclusive, of the order regulating the handling of milk in the _____[3] marketing area (7 CFR part ____[4]) which is annexed hereto; and

II. The following provisions: § ____[5] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[6], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

Dated: February 25, 2014.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2014–04692 Filed 3–6–14; 8:45 am]

BILLING CODE 3410–02–P

[2] First and last section of order.

[3] Name of order.

[4] Appropriate part number.

[5] Next consecutive section number.

[6] Appropriate representative period for the order.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1005 and 1007

**[Doc. No. AMS–DA–09–0001; AO–388–A17 and AO–366–A46; DA–05–06–A]**

## Milk in the Appalachian and Southeast Marketing Areas; Final Partial Decision on Proposed Amendments to Marketing Agreements and to Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This final decision proposes to permanently adopt revised transportation credit balancing fund provisions for the Appalachian and Southeast milk marketing orders. Specifically, this document Establishes a variable mileage rate factor using a fuel cost adjustor to determine the transportation credit payments of both orders; increases the transportation credit assessment rate for the Appalachian order to $0.15 per hundredweight; and establishes a zero diversion limit standard on loads of milk requesting transportation credits. Separate decisions will address the proposed adoption of an intra-market transportation credit provision for the Appalachian and Southeast orders and for increasing the transportation credit rate assessment for the Southeast order. This final decision is subject to producer approval. Producer approval for this action will be determined concurrently with amendments adopted in a separate final decision that amends the Class I pricing and other provisions of the Appalachian, Southeast, and Florida milk marketing orders.

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2971, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email address: *Erin.Taylor@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final decision proposes to permanently adopt amendments that: (1) Establish a variable transportation credit mileage rate factor which uses a fuel cost adjustor in both orders; (2) Increase the Appalachian order's maximum transportation credit assessment rate to $0.15 per hundredweight (cwt); and (3) Establish a zero diversion limit standard on loads of milk requesting transportation credits.

This administrative action is governed by the provisions of sections 556 and

557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing a petition with the United States Department of Agriculture (USDA) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farms. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During January 2006, the time of the hearing, there were 3,055 dairy farmers pooled on the Appalachian order (Order 5) and 3,367 dairy farmers pooled on the Southeast order (Order 7). Of these, 2,889 dairy farmers (95 percent) in Order 5 and 3,218 dairy farmers (96 percent) in Order 7 were considered small businesses.

During January 2006, there were a total of 37 handlers operating plants associated with the Appalachian order (22 fully regulated plants, 11 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 52 plants were associated with the Southeast order (31 fully regulated plants, 9 partially regulated plants and 12 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 9 (24 percent) and 18 (35 percent), respectively.

The amendments that are recommended for permanent adoption in this decision revise the transportation credit provisions of the Appalachian and Southeast orders. The Appalachian and Southeast orders contain provisions for a transportation credit balancing fund. To partially offset the costs of transporting supplemental milk into each marketing area to meet fluid milk demand at distributing plants during the months of July through December, handlers are charged an assessment year-round to generate revenue used to make payments to qualified handlers.

The adopted amendments establish a variable mileage rate factor that would be adjusted monthly by changes in the price of diesel fuel (a fuel cost adjustor) as reported by the Department of Energy for paying claims from the transportation credit balancing funds of the Appalachian and Southeast orders. Prior to their interim adoption, the mileage rate of both orders was fixed at 0.35 cents per cwt per mile.

The adopted amendments increase the transportation credit assessment rate for the Appalachian order. Specifically, the maximum assessment rate for the Appalachian order is increased to $0.15 per cwt. The transportations credit assessment rate for the Southeast order is increased by actions taken in a separate rulemaking (73 FR 14153). The higher assessment rate is intended to minimize the proration and depletion of the order's transportation credit balancing fund during those months when supplemental milk is needed. The higher assessment rate for the Appalachian order adopted in this decision is necessary due to expected higher mileage reimbursement rates arising from escalating fuel costs, the transporting of milk over longer distances and the expected continuing need to rely on supplemental milk supplies arising from declining local milk production in the marketing areas.

The transportation credit assessment rate for the Southeast order was increased from 10 cents per cwt to 20 cents per cwt on an interim basis (71 FR 62377). Subsequent to this increase, a separate rulemaking affecting the Southeast order proposed an additional increase in the assessment rate to 30 cents per cwt. A tentative partial decision (73 FR 11194), effective February 25, 2008, describes the record evidence supporting a 30 cents per cwt transportation credit assessment rate. The 30 cents per cwt assessment rate was then adopted on an interim basis (73 FR 14153) effective March 18, 2008. Since these separate decisions address the higher assessment rate, there is no further consideration to this issue in this proceeding.

Proposals published in the hearing notice as Proposal 2, seeking to establish an intra-market transportation credit provision for the Appalachian and Southeast orders, and Proposal 5, seeking to reduce the volume of milk diverted to plants located outside of the Appalachian and Southeast milk marketing areas, will be addressed in a separate decision. No further discussion of these proposals is made in this decision.

The adopted amendments also amend the *Producer milk* provisions of the Appalachian and Southeast orders by eliminating the current ability to pool diverted milk associated with supplemental milk receiving a transportation credit payment. As previously indicated in the tentative partial final decision of this rulemaking (71 FR 54118), this decision does not specifically adopt the Dean Foods Company proposal (published in the hearing notice as Proposal 4), but agrees with the need to limit diverted milk pooled on the order made possible by supplemental milk eligible to receive transportation credits.

Prior to amendments adopted on an interim basis, the Appalachian and Southeast orders provided transportation credits on supplemental shipments of milk for Class I use provided the milk was from dairy farmers who are not defined as a ''producer'' under the orders. A producer under the order is defined as a dairy farmer who: (1) during the immediately preceding months of

March through May and not more than 50 percent of the milk production of the dairy farmer, in aggregate, is received as producer milk by either order during those 3 months; and (2) produced milk on a farm not located within the specified marketing areas of either order. The provisions of each order provide the market administrator the discretionary authority to adjust the 50 percent milk production standard to assure orderly marketing and efficient handling of milk in the marketing areas.

Adoption of the proposed amendments will be applied to all Appalachian and Southeast order handlers and producers, which consist of both large and small businesses. Since the adopted amendments will affect all producers and handlers equally regardless of their size, the amendments would not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service 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.

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

**Prior Documents in This proceeding**

*Notice of Hearing:* Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

*Tentative Partial Decision:* Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

*Interim Final Rule:* Issued October 19, 2006; published October 25, 2006 (71 FR 62377).

**Preliminary Statement**

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Louisville, KY, on January 10–12, 2006, pursuant to a notice of hearing issued December 22, 2005, published December 28, 2005 (70 FR 76718).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on September 1, 2006, issued a Tentative Partial Decision, published in the **Federal Register** on September 13, 2006 (71 FR 54118) containing notice of the opportunity to file written exception thereto.

The material issues on the record of hearing relate to:

*1. Transportation Credits*

A. Establishing a variable mileage rate factor.

B. Increasing the maximum assessment rates.

C. Establishing diversion limit standards.

**Findings and Conclusions**

This final decision specifically addresses proposals published in the hearing notice as Proposals 3, 1, and certain objectives of Proposal 4. Proposal 3 seeks to establish a variable mileage rate factor (MRF) using a fuel cost adjustor. Proposal 1 seeks to increase the maximum transportation credit assessment rates for both orders. The intent of Proposal 4 is to discourage the volume of milk pooled by diversions by reducing the amount of transportation credits a handler could receive. A complete discussion and findings on these three proposals appears after the summary of testimony.

Proposal 2, seeking to establish an intra-market transportation credit provision for both the Appalachian and Southeast orders and Proposal 5, seeking to reduce the volume of milk diverted to an out-of-area plant, will be addressed in a separate decision. Accordingly, no further references to Proposals 2 and 5 will be made in this decision.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

*1. Transportation Credits*

A. Establishing a Variable Mileage Rate Factor

A proposal, published in the hearing notice as Proposal 3, seeking to establish a variable mileage rate factor (MRF) that uses a fuel cost adjustor in the transportation credit payment provisions in both the Appalachian and Southeast orders, is recommended for permanent adoption. At the time of the hearing, the two orders provided for a fixed mileage rate of $0.035 per cwt per mile. The proposal was offered by Dairy Farmers of America, Inc. (DFA). DFA is a dairy farmer member-owned Capper-Volstead cooperative that at the time of the hearing had 12,800 member farmers whose milk was pooled throughout the Federal order system, including on the Appalachian and Southeast orders.

A witness appearing on behalf of Southern Marketing Agency, Inc. (SMA) and Dairy Cooperative Marketing Association, Inc. (DCMA) testified in support of Proposal 3. SMA and DCMA are marketing agencies-in-common operating in the southeast region of the country. Members of SMA at the time of the hearing included Arkansas Dairy Cooperative Association; Dairy Farmers of America, Inc.; Dairymen's Marketing Cooperative, Inc.; Lone Star Milk Producers, Inc.; and Maryland & Virginia Milk Cooperative Association, Inc. Members of DCMA at the time of the hearing included the abovementioned members of SMA; Zia Milk Producers Association; Select Milk Producers Association; Cooperative Milk Producers Association, Inc.; and Southeast Milk, Inc. Dairylea Cooperative, Inc. also requested that the witness testify on their behalf and in support of Proposal 3.

The SMA witness testified that the southeastern region of the United States is experiencing declining milk production while the population and demand for fluid milk are increasing. As a result, the witness stated that handlers servicing the Appalachian and Southeast marketing areas must continually seek supplemental supplies of milk from outside their normal milksheds. The witness added that the volume of supplemental milk needed to meet demand that cannot be met by local production and the distances from where the supplemental milk is obtained continues to increase. The witness explained that these marketing conditions cause the transportation

credit balancing funds to be depleted at a rate faster than the rate at which handlers are assessed.

The SMA witness presented monthly fuel cost data for the United States and nine U.S. sub-regions from the Energy Information Administration of the United States Department of Energy (EIA). Relying on EIA data, the witness asserted that the cost of diesel fuel has escalated sharply in recent years. According to the witness, the national average diesel fuel price in mid-1997 was reported to be approximately $1.15 to $1.17 per gallon while the national average diesel fuel price in mid-2005 was reported to be $2.20 to $2.50 per gallon. The witness emphasized that diesel fuel prices are much higher than the prices that existed when the transportation credit provisions were first implemented in 1996 and amended in 1997.

The SMA witness noted that the cost of hauling has also increased. Relying on EIA data, the SMA witness estimated the cost of hauling to be in the range of $1.75 to $1.80 per loaded mile in 1997, whereas the cost in 2005 was about $2.35 per loaded mile. As diesel fuel costs have increased, the witness explained, so have other costs such as equipment, insurance, and labor.

The SMA witness emphasized that there have been no adjustments made to the MRF of the transportation credit provisions since they were last amended in 1997. The witness recounted that the original mileage rate was reduced by 5 percent, from $0.037 per cwt per mile to $0.035 per cwt per mile in 1997.

The SMA witness explained that in 1997, approximately 94 to 95 percent of the transportation costs of supplemental milk were covered by transportation credit balancing fund payments. The witness reiterated that since no adjustments have been made to the orders' transportation credit reimbursement rate since 1997, the percentage of hauling costs covered by the transportation credits today are substantially less than those in 1997.

According to the SMA witness, the use of a fixed mileage rate is not responsive to changes in hauling costs. The witness explained that Proposal 3 would compute a variable transportation credit mileage rate per cwt per mile that would adjust with changes in the cost of diesel fuel. The witness stressed the importance of, and the need for, keeping information on hauling costs current by using independent fuel cost data. The witness stated that hauling cost rates, adjusted for changes in fuel costs, are common in the industry.

The SMA witness illustrated components used to calculate the proposed variable MRF. According to the witness, a monthly average diesel fuel price, a reference diesel fuel price, an average mile-per-gallon truck fuel use, a reference hauling cost per loaded mile and a reference load size are the components needed to calculate the proposed variable MRF.

Using EIA data for the United States and nine U.S. sub-regions, the SMA witness explained that using the Lower Atlantic and Gulf Coast EIA regions in computing the monthly mileage rates would be reflective of the Appalachian and Southeast marketing areas. Relying on EIA data, the witness explained that the Lower Atlantic region is comprised of the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida. Similarly, the witness added, the Gulf Coast region is comprised of Alabama, Mississippi, Arkansas, Louisiana, Texas, and New Mexico. According to the witness, of the nine sub-regions described by the EIA, the Lower Atlantic and Gulf Coast regions best reflect the Appalachian and Southeast marketing areas geographically. The witness also noted that according to EIA data, the diesel fuel costs for these two regions are among the lowest reported nationally.

In establishing a reference diesel fuel price for the proposed transportation credit mileage rate calculation, the SMA witness relied on EIA retail diesel fuel prices for the time period of October to November 2003. During that period, the witness said, diesel fuel prices averaged $1.48 per gallon nationally and ranged from $1.42 per gallon in the Lower Atlantic to $1.43 per gallon in the Gulf Coast EIA regions. Due to relatively little fluctuation of diesel fuel prices during October to November 2003, the witness was of the opinion that this period is a fair and conservative timeframe on which to establish a reference diesel fuel price. The witness concluded by suggesting $1.42 per cwt per mile should be used as the reference diesel fuel price.

The SMA witness submitted a random selection of actual milk hauler bills as the basis for computing the reference hauling cost component of the proposed MRF. According to the witness, actual origination and destination points, miles moved, and rates and fuel surcharges per loaded mile were depicted on each hauling bill. For the month of October 2005, the witness stated that hauling costs ranged from $1.89 to $2.70 per loaded mile, with the average being $2.48 per loaded mile. In order to be consistent with the timeframe used for the reference diesel fuel price, the witness submitted selected milk hauling bills from October to November 2003 as the basis for determining the reference hauling cost. The witness testified that for this time period the simple average hauling rate charged per loaded mile in the Southeast was $1.9332 and $1.8913, respectively, and averaged $1.9122. Accordingly, the witness offered that the average hauling rate of $1.91 per loaded mile should become the reference hauling cost used in calculating the MRF.

The SMA witness provided data compiled by the United States Department of Transportation (USDOT) on combination truck fuel economy. According to the witness, the USDOT data indicated that the average miles traveled per gallon for a combination truck in 2002 was 5.2. The witness was of the opinion that dairy industry fuel economy is similar, as it ranges between 5.0 to 6.0 miles per gallon. Accordingly, the witness advocated using a 5.5 miles per gallon fuel consumption rate in computing the proposed MRF. The witness also testified that a 5,600 gallon tanker, at its fullest capacity, can carry 48,160 pounds of milk. Therefore, the witness explained, 48,000 pounds should be the reference load size used in calculating the MRF.

The SMA witness summarized that Proposal 3 calculates a variable monthly MRF by using: (1) EIA data from a base period defined as October and November 2003, (2) hauling cost of $1.91 per loaded mile, (3) a reference diesel fuel rate of $1.42 per gallon, (4) a fuel economy of 5.5 miles per gallon and (5) a load size of 48,000 pounds.

The SMA witness explained that the proposed mileage rate would be calculated by averaging the four most recent weeks of retail on-highway diesel prices for both the Lower Atlantic and Gulf Coast, as reported by the EIA prior to each order's announcement of the Advance Class milk prices. According to the witness, the proposed mileage rate would then be computed and included in each order's announcement of Advanced Class milk prices that are announced publicly on or before the 23rd of the month.

The SMA witness stressed that, for a variety of reasons, the proposed mileage rate computation reflects less than the actual cost of hauling. The witness asserted that the proposed mileage rate is based on costs of hauling from 2003, rather than a more current timeframe, and therefore would only reflect changes in the cost of diesel fuel since that time. The witness also reiterated that the proposed mileage rates would apply only to Class I milk shipped in

excess of 85 miles, directly from farms to plants. The SMA witness was of the opinion that transportation costs will continue to increase and that adopting the proposed changes to the transportation credit provisions will avoid exhausting the transportation credit balancing fund before costs are reimbursed.

The SMA witness asserted at the time of the hearing that they were incurring substantial losses in supplying supplemental milk for Class I use to the Appalachian and Southeast marketing areas. The witness indicated that hauling costs in supplying supplemental milk exceed $15 million annually.

A comment filed by SMA in response to the Tentative Final Decision reiterated support for the adoption of Proposal 3.

Six DFA farmer-members testified in support of Proposal 3. According to these witnesses, it is the cooperative members of SMA who are acting as handlers to supply the supplemental fluid milk needs of both marketing areas. According to the witnesses, this results in additional costs that are absorbed by the dairy farmer members of the cooperatives that comprise SMA. The witnesses argued that hauling costs and the distances supplemental milk must be hauled continue to increase.

The six DFA dairy farmer witnesses were of the opinion that Proposal 3 is a reasonable solution to deal with the continued production decline and population driven demand increase in the southeastern region of the United States. The witnesses were of the opinion that using a fuel adjustor that moves up and down with changes in the cost of diesel fuel would more adequately cover the costs of transporting supplemental milk to the two marketing areas.

A post-hearing brief submitted by DFA, and supported by SMA, reiterated support for adopting a fuel cost adjustor.

A post-hearing brief was submitted on behalf of Arkansas Dairy Cooperative Association (ADCA) in support of Proposal 3. According to ADCA, its members' milk does not usually qualify for transportation credit payments because it is typically pooled on the Southeast and Central orders year-round. However, ADCA noted that its members are impacted by the cost of hauling supplemental milk into the southeast because of its membership in a marketing agency-in-common.

A post-hearing brief was submitted on behalf of Dairymen's Marketing Cooperative, Inc. (DMCI) in support of Proposal 3. The brief emphasized that as fuel costs continue to increase, the Class I differential surface becomes more outdated and unable to reflect the costs of moving milk.

A post-hearing brief was submitted on behalf of Lone Star Milk Producers (Lone Star) in support of Proposal 3 because it would establish updated mileage rates for payments from the transportation credit balancing funds. The brief stated that the hauling cost factor used to develop the mileage rate for the transportation credit balancing fund has not been updated since the mid 1990's and is inadequate.

A post-hearing brief submitted by Maryland & Virginia Milk Producers Cooperative Association, Inc. (Maryland & Virginia) reiterated support for the adoption of Proposal 3.

A post-hearing brief was submitted on behalf of South East Dairy Farmers Association (SEDFA). The brief expressed support for a variable mileage rate based on the changes in the cost of diesel fuel. The brief stated that the industry uses a consistent fuel economy estimate of 5.0 to 6.0 miles per gallon when calculating expected milk transportation costs. The brief stressed that the extreme rise in diesel fuel prices in recent months has made the adoption of Proposal 3 critical for producers who incur the cost of hauling milk to the market.

A witness appearing on behalf of Southeast Milk, Inc. (SMI) testified in support of Proposal 3. SMI is a dairy marketing cooperative with, at the time of the hearing, approximately 300 dairy farmer members in Florida, Georgia, Alabama, and Tennessee. The SMI witness stated that relying on cost indexes of other government agencies determined on a national scale makes the data less subject to manipulation by any given industry.

A witness testified on behalf of Dean Foods Company (Dean) in support of Proposal 3. According to the witness, Dean owns and operates 8 plants regulated by the Appalachian marketing area and 10 plants regulated by the Southeast marketing area. The Dean witness agreed with the benefit of using an adjustor in determining the MRF to reflect changes in fuel prices over time. However, the witness also was of the opinion that the MRF should be reduced to 95 percent in order to be consistent with the Secretary's past decisions that transportation credits do not encourage the uneconomic movement of milk or inefficiencies.

The Dean witness testified that the marketing areas are in need of supplemental milk supplies and that supplying such milk presents challenges. Nevertheless, the witness expressed concern for the continuing and potential future abuse of transportation credits. The witness asserted that current order provisions allow supplemental milk to receive transportation credits, when such milk is not demanded. Moreover, the witness stressed that there is no assurance that transportation credit balancing fund payments would flow to the dairy farmer members of the cooperatives acting as handlers located in the two marketing areas regardless of the producers' status as independent or cooperative members.

A post-hearing brief submitted on behalf of Dean reiterated support for Proposal 3, indicating that disorderly marketing conditions exist because the milk supply in the Southeastern United States is deficit and the cost of supplying the market is not borne equally. Additionally, a comment filed by Dean in response to the Tentative Final Decision expressed continued support for the adoption of Proposal 3.

A dairy farmer who supplies milk to Dean testified in support of the intent of Proposal 3. The witness stated that a dynamic mileage rate that adjusts to the energy markets is better than a static factor that is unable to adjust in response to changes in energy costs.

A dairy farmer who markets milk to Dean through Dairy Marketing Service (DMS) testified in favor of Proposal 3. The witness stated that using a variable MRF derived from a source outside of the dairy industry, such as the USDOT, would help decrease the chances of industry participants manipulating the information that should be used in calculating a MRF.

A witness appearing on behalf of Land O'Lakes, Inc. (LOL) testified in support of Proposal 3. LOL is a dairy farmer member-owned Capper-Volstead cooperative with, at the time of the hearing, over 4,000 member farmers whose milk is pooled on 6 Federal Orders. The witness stated that its members' milk located in the Northeast and Midwest have provided supplemental supplies to both the Appalachian and Southeast marketing orders for the past 10 years.

According to the witness, LOL supplies supplemental milk to the Appalachian and Southeast orders and experiences high milk hauling costs. The witness asserted that using diesel fuel prices as the basis for the MRF would make it responsive to actual costs incurred by the handlers moving milk into these two deficit markets.

A post-hearing brief submitted by LOL reiterated support for the adoption of Proposal 3. The brief said that in order to fulfill the supplemental milk needs of the Appalachian and Southeast

order marketing areas, milk is sourced from 28 States. According to the brief, this demonstrates that the distance milk must travel has further increased, thereby strengthening the justification for the adoption of Proposal 3. Additionally, a comment filed by LOL in response to the Tentative Final Decision expressed continued support for the adoption of Proposal 3.

An independent dairy farmer from Tennessee testified in opposition to any changes to the Appalachian or Southeast marketing orders. The witness testified that additional government intervention in moving milk was not necessary and that supply and demand should be relied upon to dictate what services are needed. The witness asserted that amending the orders as proposed would change the way milk is moved, thereby hindering efficient milk hauling. The witness also was of the opinion that there is no assurance that transportation credits received for supplying supplemental milk would truly reach the market's producers. The witness expressed concerns that the proposed increases in the transportation credit rate could affect producer decisions and producer blend prices.

A witness testified on behalf of the Kentucky Dairy Development Council (KDDC). KDDC is a member-based organization that, at the time of the hearing, represented approximately 1,360 dairy farmers in Kentucky. The witness did not state support for or opposition to the proposals presented at the hearing. The witness was of the opinion that noncompetitive pricing is discouraging milk production in the southeastern United States. The witness was of the opinion that farm milk prices in Kentucky and in the Southeastern States have eroded and that KDDC was opposed to any Federal Order changes which would further erode farm prices. The witness did testify in support of changes to the orders that would strengthen the position of dairy farmers in Kentucky and in other Southeastern States.

A post-hearing brief submitted by KDDC in support of Proposal 3 said that Proposal 3 would benefit Kentucky dairy farmers by providing assistance in recovering market service costs.

B. Increasing the Maximum Assessment Rate

A proposal, published in the hearing notice as Proposal 1, offered by DFA, that seeks to increase the maximum transportation credit balancing fund assessment rates for the Appalachian and Southeast orders is adopted. Specifically, the maximum transportation credit balancing fund assessment rate in the Appalachian order is increased by $0.055 per cwt on Class I milk for an amended rate of $0.15 per cwt. The Southeast order's maximum assessment rate was increased by $0.10 per cwt for an amended rate of $0.20 per cwt and implemented on an interim basis. Subsequent to the interim adoption of the $0.20 per cwt assessment rate, a separate rulemaking increased this rate to $0.30 per cwt (73 FR 14153). Accordingly, this decision would permanently adopt the higher assessment rate for the Appalachian order only.

A witness appearing on behalf of DCMA and SMA testified in support of Proposal 1. As previously described in testimony regarding Proposal 3, the SMA witness said that the current transportation credit provisions provide for the collection of a maximum transportation credit assessment to handlers on all Class I milk for the Appalachian and Southeast marketing areas year-round. While the market administrator has the discretion to waive the maximum transportation credit assessments if deemed necessary, the SMA witness explained that the market administrator of each order collected the maximum assessments in 2004 and 2005. However, the witness said that the collected assessments in both orders had been insufficient to pay the requested credits, thereby necessitating the prorating of payments from the transportation credit balancing fund.

The SMA witness stated that even with the November 1, 2005, implementation of a transportation credit assessment increase of $0.03 per cwt for both orders, the assessment rate will likely not be able to ensure payments from the transportation credit balancing funds on all milk eligible to receive payment.

The SMA witness estimated that the transportation credit assessment rate for the Appalachian order for 2004 would have needed to be $0.0889 per cwt and $0.0953 per cwt for all of 2005 to cover all of the transportation credits requested. The witness also estimated that the Southeast order transportation credit assessment rate would needed to have been $0.1318 per cwt and $0.1246 per cwt in 2004 and 2005, respectively, to cover all requested credits. Additionally, the witness noted that the transportation credits requested for both the Appalachian and Southeast marketing orders for the months of July, September, and October of 2005 exceeded the transportation credits requested in all of 2004. The witness said this also demonstrates that increased volumes of supplemental milk were transported from locations farther from the marketing areas.

The witness said that the reason the market administrators prorated payments from the transportation credit balancing funds was because the rate of assessments exceeded collections. The witness was of the opinion that this occurred because more supplemental milk was sourced from more distant locations.

Relying on market administrator data, the witness concluded that only 55 percent of the actual cost of transporting supplemental milk was covered by the transportation credit payments in the Appalachian order in 2004. Similarly, only 39 percent of the actual cost was covered for the Southeast order during the same period. The witness further estimated that in 2005, only 53 percent and 43 percent of the actual hauling costs for supplemental milk would be covered for the Appalachian and Southeast orders, respectively.

In explaining the need for the adoption of Proposal 3, the SMA witness reiterated that the combined effect of higher mileage hauling rates and the increased distance from which supplemental milk had to be hauled, resulted in a smaller portion of actual transportation costs being funded with transportation credits compared to the rate in 1997. The witness was of the opinion that transportation costs will continue to increase, making it necessary to again increase the assessment rate.

Further illustrating the need to increase the maximum transportation credit assessment rate, the SMA witness indicated that if a transportation credit reimbursement rate of $0.046 per cwt per mile had been in place rather than the current rate of $0.035 per cwt per mile, the Appalachian order would have required an assessment of $0.133 per cwt in 2004 and an assessment of $0.1415 per cwt in 2005, to prevent the prorating of transportation credit claims. Similarly, the witness stated that for the Southeast order, the assessment rate would have needed to have been $0.1927 per cwt in 2004 and $0.1869 per cwt in 2005.

The SMA witness testified that the different rates of transportation credit balancing fund assessments proposed for the Appalachian and Southeast orders reflect the differing costs of supplying supplemental milk into each marketing area. The witness stated that while the transportation credit assessment was waived for 2 months during 2002 and 2003 in the Appalachian order, assessments were not waived for the Southeast order. The

witness asserted that while both orders rely on some of the same sources for supplemental milk, the Appalachian marketing area, at the time of the hearing, received most of its milk from the more northern Mid-Atlantic States while the Southeast marketing area received most of its supplemental milk from States located to the west and southwest of the marketing area. Furthermore, the witness added that different assessment rates for the two orders are warranted because at the time of the hearing, supplemental milk moved greater distances to service the Southeast market than it did to service the Appalachian market.

The six DFA dairy farmer witnesses that testified in support of Proposal 3 also testified in support of increasing the transportation credit assessments for both orders. The witnesses were of the opinion that the assessment increases would generate funds needed to maintain a sufficient transportation credit fund balance capable of paying on eligible claims. In addition, the witnesses were of the opinion that the orders' current location adjustments were not able to reflect the rapidly increasing costs of transporting milk from where it is located to where it is needed. Similarly, the witnesses stated that over-order premiums cannot be garnered from the market to offset rapidly increasing transportation costs.

The six DFA dairy farmer witnesses were also of the opinion that the intent of increasing the transportation credit assessment rates was a reasonable solution to mitigate continued production declines and the increasing demand for milk in the southeastern United States due to continued population increases in that region. The witnesses added that the markets' producers face higher fuel costs and longer hauling distances associated with obtaining supplemental milk. When producers go out of business, the witnesses said, the gap between supply and demand widens thereby increasing the cost of supplying the market with supplemental milk.

Post-hearing briefs submitted by DFA reiterated the position and testimony of SMA in support of increasing the transportation credit assessment rates immediately.

A post-hearing brief was submitted on behalf of Select Milk Producers, Inc. (Select) and Continental Dairy Products, Inc. (Continental) in support of Proposal 1. At the time of the hearing, Select's members were located in New Mexico, Texas, Kansas, and Oklahoma, while Continental's members were located in Indiana, Michigan, and Ohio. The brief stated that both cooperatives supply the Appalachian and Southeast marketing areas with supplemental milk. Select and Continental expressed support for proponent's hearing testimony in favor of increasing the transportation credit assessment rates of the two orders. The brief stated that while the proposals under consideration will not fix long-term marketing and transportation problems, Proposal 1 should be adopted in conjunction with USDA's consideration of alternative approaches aimed at correcting the milk deficit problems in the southeast region of the United States.

The Select/Continental brief expressed the opinion that blend prices, not Class I prices, provide the economic incentive to supply milk to a marketing area. The brief stated that when producers in a large marketing area share the same blend price, the incentive to move milk within the large marketing area is greatly diminished. In addition, the brief indicated that the pricing of diverted milk ignores the value of milk to the market where pooled, which results in milk being pooled that is not available to meet the Class I needs of the market.

A post-hearing brief was submitted on behalf of Southeast Dairy Farmer Association (SEDFA). The brief expressed support for Proposal 1 as published in the hearing notice. SEDFA represents cooperative and independent producers who are regular and supplemental milk suppliers located in and outside of the Appalachian and Southeast marketing areas.

The SEDFA brief asserted that whether milk is produced inside or outside of the two marketing areas, the cost of moving Class I supplemental milk should be borne by the marketplace. The brief stated that while the reimbursement of actual hauling costs is much lower than in 1997, the amount of supplemental milk being brought into the marketing areas is increasing. The brief concluded that because reimbursement of actual hauling cost is smaller, the higher costs not reimbursed have fallen disproportionately on producers. The brief agreed with Lone Star and Maryland & Virginia that the $0.03 increase in the transportation credit assessments implemented in November 2005 [1] would be insufficient to cover the expected transportation credit claims during 2006.

A witness appearing on behalf of LOL testified in support of Proposal 1. The LOL witness agreed with other proponents that the transportation credit balancing fund for both orders has been insufficient to support transportation credit payments. While the witness supported the transportation credit assessment increases effective in November 2005, the witness did not think that this would be sufficient to reimburse future claims.

A post-hearing brief submitted by LOL reiterated its support for the adoption of Proposal 1. The brief indicated that the southeast region of the country is not able to fulfill Class I demands during any season of the year and must rely on a supplemental milk supply from about 28 States outside the Appalachian and Southeast marketing areas. The brief noted that transportation credits installed in the southeastern region in 1996 were based on the recognition that the region's Class I needs could only be met by supplemental milk from dairy farms located outside of the region.

A witness testifying on behalf of Dean expressed cautious support for increasing the transportation credit assessment rates of the two orders because the availability of additional credits must be balanced with consideration for abuses and undesired results. The witness was of the opinion that handlers who receive such credits are also pooling milk on the orders through the diversion process which does not actually serve the markets' Class I needs.

A post-hearing brief submitted on behalf of Dean agreed with proponents of Proposal 1 that disorderly marketing conditions exist. The brief stated that the southeast area's milk supply is deficit and the cost of supplying the market is not borne equally.

A witness testified on behalf of SMI in opposition to Proposal 1. The witness characterized transportation credits as a subsidy. The witness further expressed that subsidizing the transportation of milk produced outside of the marketing areas results in economic disincentives for local milk production and provides incentives for local milk supplies to be replaced by milk from outside the two marketing areas. The witness noted that when transportation credits were first adopted in 1996, the average Class I utilization of the southeast region was in the mid-80 percent range. Since the implementation of transportation credits, the witness said, Class I utilization had fallen to the 60 percent range. It was the opinion of the witness that transportation credit provisions are contributing to declining milk production in the two marketing areas.

The SMI witness testified that transportation credits should be eliminated. As an alternative, the witness suggested: (1) Establishing a

[1] 70 FR 59221.

method whereby Class I prices could be adjusted based on more regional marketing conditions; (2) adopting a base-excess plan; (3) increasing the current Class I differential level; and (4) any other provisions that would encourage local milk production.

A Kentucky dairy farmer testified in opposition to Proposal 1. The witness argued that providing transportation credits devalues local milk, which results in lower prices to local producers and causes declining milk production in the two marketing areas. The witness expressed concern that Proposal 1 would encourage more milk from outside the marketing areas to be pooled on the orders even though it is not delivered to either marketing area on a daily basis, as is the locally produced milk. According to the witness, local producers are not able to receive the full value for local production because transportation credits give price advantages to producers located far from the marketing areas. The witness concluded by stating that pooling milk located outside of both marketing areas does not represent Class I use and therefore this milk should not be pooled on the Appalachian or Southeast orders.

A dairy farmer witness who supplies milk to Dean testified in opposition to Proposal 1. The witness viewed increasing assessment rates on transportation credits as detrimental to those dairy farmers who are located in the Appalachian and Southeast marketing areas and who regularly supply the Class I needs of the market. The witness was of the opinion that Proposal 1 lacks safeguards on the amount of additional milk that could be pooled on the orders by diversion. The witness said that this additional pooled milk would unnecessarily lower the blend price received by producers and essentially result in out-of-area milk supplies becoming less expensive relative to milk produced in-area. As a consequence, the witness said, local in-area producers will be forced out of business because of lower prices. Should this occur, the witness said, the need for additional out-of-area supplemental milk supplies would further increase to meet the Class I needs of the marketing areas.

The witness suggested that instead of providing additional transportation credits, a review of the level of Class I differentials and a review of diversions and touch-base provisions should be considered in another hearing.

An independent dairy farmer from Tennessee testified against making any changes to the Appalachian and Southeast marketing orders, including the adoption of Proposal 1. In addition to the witness' testimony regarding Proposal 3 as was already described, the witness was of the opinion that additional government intervention to provide for increasing the transportation credit assessment rate was not necessary and that supply and demand forces should dictate what services are needed. The witness asserted that amending the orders as proposed would change the way milk is transported and would hinder efficient handling of milk. The witness was of the opinion that there would be no assurance that the transportation credits would benefit the producers who were pooled on the two orders and had incurred the additional costs of servicing the Class I market.

A dairy farmer, who also markets milk to Dean through DMS, testified in opposition to Proposal 1. The witness said that local producers of the Appalachian and Southeast marketing areas are unable to supply all the fluid milk needs of the two marketing areas because local milk production in these areas is declining. The witness suggested that if Proposal 1 were adopted, an accounting of the total transportation costs of all milk movements should be supplied to the market administrators and be made available for public inspection. The witness also suggested making changes to the level of adjustments of milk prices by location (location adjustments) as an alternative to increasing the transportation credit assessment rate. The witness said if location adjustments were changed, the pooling standards for both orders would also need to be adjusted. Specifically, the witness suggested increasing the number of days' production needed to touch base, or increasing the performance standards of the orders.

A post-hearing brief submitted by the Kentucky Dairy Development Council (KDDC) supported Proposal 1. The brief noted that increasing the transportation credit assessment rate would benefit Kentucky dairy farmers by providing assistance in recovering costs associated with serving the market.

C. Establishing Diversion Limit Standards

A proposal submitted by Dean Foods, published in the hearing notice as Proposal 4, seeks to reduce a handler's ability to utilize transportation credits to qualify producers for pooling on the orders. The intent of the proposal is to limit the pooling of additional surplus milk on the orders through the diversion process. At the time of the hearing, large volumes of milk were being pooled through diversions on the Appalachian and Southeast orders from locations distant from the marketing areas. While Proposal 4 would provide incentives to limit the pooling of milk through the diversion process, it would do so indirectly by limiting the payment of transportation credits. This decision chooses to directly limit diversions by establishing a zero diversion limit on milk that receives transportation credits.

A witness appearing on behalf of Dean testified in support of Proposal 4 while also expressing cautious support for the proposed transportation credit assessment increase (Proposal 1). The witness was of the opinion that handlers supplying supplemental milk to the two marketing areas receive a financial benefit from pooling diverted milk on the orders even though the milk does not ultimately serve the fluid market. The witness explained that while the diverted milk typically does not serve the two markets, it seeks to be pooled on the two orders because the blend prices are higher than what this milk could receive if pooled on other Federal orders.

The Dean witness testified that the establishment of large marketing orders has created new marketing problems. According to the witness, when the Federal order system had a larger number of smaller markets, each order's marketwide pools were small. Markets with large populations relative to associated milk, the witness explained, had higher Class I utilizations and higher blend prices to attract supplemental milk supplies. Markets with significant supplies of milk and smaller populations, the witness related, had lower Class I utilizations and producers pooled in those markets were provided with the economic incentive to look for higher returns from markets with higher blend prices. The witness further explained that smaller marketing areas limited the size of the Class I market and, in turn, limited how much milk could be pooled by diversion. The witness said that when orders were smaller, there were disincentives to pooling milk and the orders were more effective in limiting a handler's ability to pool milk through diversions. According to the witness, the relative value of diverted milk was tied to its distance from the market.

The Dean witness also testified that the Class I price surface adopted during Federal milk order reform changed the relative relationship of milk value to its distance from the market. According to the witness, the location value of diverted milk prior to reform was determined by adjusting milk value according to its distance from an order's pricing point. The witness said this

resulted in each plant having a different location adjustment value to its milk receipts depending on the order on which its receipts were pooled. The witness explained that the further milk was located from the order's pricing point, the less likely it was to be pooled as a diversion.

The Dean witness expressed concern that no longer valuing milk relative to the order on which it is pooled had a material effect on the value of pooling milk located far from the market by diversion. The witness was of the opinion that the flatter Class I price surface, with fixed differential levels by county, places a value on milk that is not reflective of its value to the marketing order where pooled making it economically desirable to pool milk located far from the market through the diversion process. The witness was also of the opinion that this served to provide the incentive for pooling distant milk by diversion.

The Dean witness testified that even though there are closer milk supplies, distant milk is being pooled on both orders. The witness further asserted that transportation credits amplify the pooling of milk on the orders, which does not service the markets' Class I needs. The witness was of the opinion that pooling distant milk by diversion clearly results in disorderly marketing conditions within the two markets. According to the witness, when such milk is pooled, local farmers who are consistently serving the Class I needs of the markets receive a needlessly lower blend price.

According to the Dean witness, the objective of Proposal 4 is to modify the receipt of transportation credits depending on a handler's specific service to the Class I need of the markets and to lower transportation credit payments to those handlers who have higher levels of diversions. The witness stated that the current reimbursement rate of transportation credits is the same for each handler regardless of the level of its relative service to the fluid market. The witness explained that when a handler delivers 100 percent of its receipts to a pool distributing plant, it receives transportation credits at the same rate as a handler delivering only the minimum volume needed to meet the pooling qualifications. The witness conveyed that the handlers meeting only the minimum pooling standards are then able to divert milk which is not actually available to the market. Additionally, the witness indicated that adjusting a handler's receipt of transportation credits in this way will maintain and help extend the transportation credit balancing funds.

The Dean witness acknowledged the need for balancing because distributing plants do not typically need to receive milk every day of the week. However, the witness asserted that unlimited diversions undermine the purpose of the Federal order system. The witness explained that the proposed 30 percent diversion limit on supplemental milk seeking transportation credits is reasonable because a distributing plant typically receives milk five days per week. The need to divert milk 2 days per week, the witness explained, justifies the 30 percent diversion limit. The Dean witness explained that based on data provided by the market administrator, there are handlers in both orders who divert significantly more pounds of milk than the orders need to balance the Class I demands of pool distributing plants, and yet still receive transportation credits.

A post-hearing brief submitted on behalf of Dean reiterated support for the adoption of Proposal 4 provided that Proposals 1 and 3 are adopted. The brief stated that Proposal 4, when adopted in conjunction with Proposals 1 and 3, would tend to limit the abuse of transportation credits on supplemental milk for Class I use as a result of the cap on the receipt of transportation credits by handlers suggested in Proposal 4. The brief also stressed that, if adopted, the provisions detailed in Proposal 4 would lead to the exercise of some control over the amount of milk that would be pooled on the orders through the diversion process.

A dairy farmer who supplies milk to Dean testified in support of Proposal 4. The witness agreed with Dean and other witnesses that orders should only pool the milk of producers who truly serve the Class I needs of the market, otherwise revenue essentially leaves the two marketing areas. According to the witness, this loss of revenue leads area dairy farmers to exit the industry, thereby further reducing the availability of local milk supplies and increasing the need for acquiring more milk produced from far outside the marketing areas. The witness was of the opinion that it is the shipments of supplemental milk into the marketing areas that provide the ability to pool milk by diversion when it is not available to the market.

A witness from SMI testified in support of Proposal 4, provided Proposals 1 and 3 are adopted.

A Kentucky dairy producer testified in support of Proposal 4 and said that supplemental milk receiving transportation credits should be subject to some limits on the amount of additional milk that can be pooled by diversion. The witness was of the opinion that transportation credits give producers located outside the marketing areas a price advantage because their diverted milk receives the blend price of the orders.

A witness appearing on behalf of LOL testified in opposition to Proposal 4. The witness noted that transportation credits were established to attract supplemental milk and to partially offset the cost of hauling supplemental milk into the deficit markets. The witness explained that the orders' specify the conditions that must be met to be eligible to receive transportation credit payments. The current transportation credit provisions, the witness said, already limit payments for supplemental milk from outside the marketing areas to include only the milk of dairy farmers who are not defined as ''producers'' under the orders. The witness also said that payments are limited to Class I pounds and are not paid on the first 85 miles of hauling milk from farms to the plant receiving supplemental milk.

The LOL witness stressed that additional limitations would do nothing to encourage the delivery of needed supplemental milk into the marketing areas during the short production months. The witness was of the opinion that if the intent is to change the diversion limits of the orders, then those changes should be addressed in a separate hearing.

A post-hearing brief submitted by LOL reiterated its position given at the hearing opposing Proposal 4. The brief also stated that Proposal 4 improperly assumes that all handlers supplying supplemental milk have equal access to distributing plants and that distributing plants' Class I use of milk is the same as the Class I utilization of the two markets.

A witness appearing on behalf of SMA also testified in opposition to Proposal 4. The witness was of the opinion that the orders touch-base and diversion limit standards already provide sufficient safeguards to pooling milk not needed for Class I use. The SMA witness explained that it is difficult to establish specific diversion limits on supplemental milk, as contained in Proposal 4, because of individual differences in the balancing needs of each distributing plant, noting that these needs continually change. The witness emphasized that difficulties in balancing the orders' pool distributing plants exist year-round, and that suppliers sometimes have no control over factors that may alter balancing needs. The witness noted that some of SMA's purchase agreements for supplemental milk included

arrangements where transportation credit payments are paid directly to the supplying cooperative. In this regard, the witness expressed concern that providing a separate diversion limit on milk receiving transportation credit payments would unfairly penalize the cooperative when a distributing plant overestimates its need for supplemental milk. The witness stated that extreme variations in daily, weekly, and monthly deliveries to pool distributing plants occur. Relying on market administrator data for January 2004 through October 2005 that showed the ratio of the highest delivery to lowest delivery day, the witness concluded that a 30 percent reserve factor would not have been sufficient to cover distributing plant balancing needs.

The SMA witness also was of the opinion that Proposal 4 would give pool distributing plant operators an advantage over cooperatives who, in their capacity as handlers, are supplying supplemental milk. The witness said that while cooperatives handle the majority of supplemental milk for the orders, they may receive little or no transportation credit payments under Proposal 4. According to the witness, a diversion limit could only benefit those handlers in nearer proximity to the marketing areas.

A post-hearing brief was submitted on behalf of ADCA in opposition to Proposal 4. The brief stressed that the seasonality of production in the southeastern region is the highest in the country and as such, a greater reserve of milk must be available. The brief concluded that Proposal 4 would create inequities between handlers supplying supplemental milk while also encouraging uneconomic movements of milk.

A post-hearing brief was submitted on behalf of DMCI in opposition to Proposal 4. The brief asserted that there are too many unanswered questions as to how Proposal 4 would be applied. The brief stated that a distributing plant's reserve milk needs are an individual business decision and should only be limited by the order's pooling provisions.

A post-hearing brief submitted by DFA and other SMA members reiterated their opposition to Proposal 4. The brief noted that during many months, a 30 percent diversion limit is insufficient to cover balancing needs. Therefore, if Proposal 4 were implemented, the brief said, it could disproportionately affect different supplemental supplies and distributing plants in the marketing areas.

A post-hearing brief was submitted on behalf of Lone Star in opposition to Proposal 4. The premise of its opposition was that Proposal 4 would establish a ''one-size-fits-all'' diversion limit for all Class I handlers. The brief noted that a distributing plant's reserve milk needs are individual decisions in response to its customer base and seasonal changes in demand. The brief expressed the opinion that the orders already provide for some of the most strict diversion limit standards and touch-base requirements in the Federal order system.

**Comments and Exceptions**

Comments filed by Dean in response to the tentative partial decision supported the proposed amendments as recommended by USDA. The brief offered support of USDA's alternative to Proposal 4 which, in its opinion, more directly addressed the problem of pooling diverted milk that is associated with supplemental milk supplies. Dean also stated that since the Department's alternative continued to address the intent of Proposal 4, it would support the adoption of Proposals 1 and 3. In brief, Dean expressed that USDA's decision adequately addressed concerns it expressed at the hearing regarding pooling abuse and ensuring that transportation credits only reimburse handlers for a portion of the supplemental hauling costs.

Comments filed on behalf of SMA also expressed support for the amendments recommended in the tentative final decision. SMA stated that the recommended amendments would ensure that there are sufficient funds available to fund the transportation credit balancing fund and that transportation credits would better reflect the changing costs of supplying supplemental milk to the southeastern region. Comments filed on behalf of LOL supported the adoption of Proposals 1 and 3. LOL stated that increasing the transportation credit assessment rates and updating the payment rate to better reflect the cost of fuel were long overdue improvements to the two orders' transportation credit provisions. However, LOL took exception with USDA's recommendation regarding Proposal 4 (pooling of diverted milk through supplemental milk supplies). LOL argued that by not allowing diversions on supplemental milk supplies, supplemental milk suppliers located outside of the marketing areas would bear the burden of balancing the markets' seasonal milk needs. LOL also argued that while USDA asserted in the tentative final decision that limiting diversions on supplemental milk supplies would increase blend prices to the orders' dairy farmers, no analysis was provided to verify the claim. Additionally, LOL wrote that the record reveals the problem with diversions is greater in the Southeast marketing area and therefore unique marketing conditions call for unique provisions in each order.

**Findings/Discussion**

The issue before USDA in this decision is the consideration of changes to the transportation credit and closely related provisions of the Appalachian and Southeast milk marketing orders. Transportation credit provisions have been a feature of the current orders (and their predecessor orders) since 1996. The need for transportation credit provisions arose from a consistent need to import milk from considerable distances to the marketing areas during certain months of the year when local milk production was not sufficient to meet Class I demands. Transportation credit provisions provide payments to handlers to cover a portion of the costs of hauling supplemental milk supplies into the Appalachian and Southeast marketing areas during the months of January, February, and July through December—a time period during which supplemental milk is needed to meet the demand for Class I milk at distributing plants.

The transportation credit provisions are designed to distinguish between producers who regularly supply the Appalachian and Southeast markets from producers who are *supplemental suppliers* (not regular suppliers) of these markets. Only milk from producers who are both located outside of the marketing area and who are not considered ''producers'' of the order is eligible to receive transportation credits.

The record reveals that the Appalachian marketing area, and in particular, the Southeast marketing area, are chronically unable to meet Class I demands. Local milk production relative to demand has declined and is expected to continue declining. Consequently, local milk production is not always able to fulfill the Class I needs of the markets which necessitates the need for supplemental milk from distant locations. As local milk production has eroded, the volume of supplemental milk needed for fluid use has increased, while at the same time the distance from the marketing areas from which the supplies are obtained has increased. This development is particularly evident for the Southeast marketing area. These combined factors have caused the transportation credit balancing fund (TCBF) to be insufficient in covering requested transportation

credit payments. The TCBF will likely not be able to cover future requested payments unless the amendments contained in this decision are adopted.

While both marketing areas are able to supply the Class I needs of their respective markets during the spring ''flush'' months without the need for transportation credits, the record clearly indicates that both orders are unable to fully supply their fluid needs with local production during the last 6 months of the year. The chronic shortage of milk for fluid uses during this period has worsened over time, especially in the Southeast marketing area. Evidence shows that the trend of declining production relative to demand will result in an increased need for supplemental milk supplies and it is likely that this trend will continue into the foreseeable future.

**Variable Mileage Rate Factor—A Fuel Cost Adjustor**

Based on record evidence, this decision continues to find that the mileage rate factor (MRF) used to determine the payment of transportation credits should include a fuel cost adjustor as proposed in DFA's Proposal 3.

The original fixed mileage rate for both orders was $0.037 per cwt per mile when the transportation credit provisions were first established in 1996. The computation of the transportation credit payments was based on the total miles supplemental milk was shipped from its point of origination to its destination—the receiving pool distributing plant. In 1997, several amendments were made to the transportation credit provisions of the orders that included a reduction of the mileage rate from $0.037 per cwt per mile to the current $0.035 per cwt per mile.[2]

Additional amendments made in 1997 to the transportation credit provisions specified the exclusion of the first 85 miles supplemental milk was hauled from farms in determining the total miles shipped. Additionally, the 1997 amendments eliminated the use of the orders' producer settlement fund as a source of revenue for the payment of transportation credits on supplemental milk when the TCBF was unable to pay net transportation credit claims. No other amendments have been made to the MRF used in the transportation credit provisions since 1997.

Proposal 3 adjusts the MRF accordingly with changes in the cost of diesel fuel. Specifically, the component factors used in the determination of the variable MRF used in the calculation of TCBF payments include: a monthly average diesel fuel price; a reference diesel fuel price; an average mile-per-gallon truck fuel use; a reference hauling cost per loaded mile; and a reference load size.

The Energy Information Administration (EIA) data for the United States and nine U.S. sub-regions are a reliable and reasonable data source to be used in the establishment of certain components required to determine a variable MRF. The data are representative of diesel fuel prices in the Appalachian and Southeast marketing orders and can be relied upon as a basis upon which adjustments to the MRF can be made. Reliance on EIA data, as it is independent and unbiased, will make determination of the MRF objective and uniformly applicable to all handlers.

The proponent's suggested that the use of the Lower Atlantic and Gulf Coast EIA regions in the computation of monthly mileage rates for the Appalachian and Southeast orders is reasonable. The record reveals that the Lower Atlantic and Gulf Coast regions best reflect the Appalachian and Southeast marketing areas geographically. Additionally, the record reflects that the diesel fuel prices reported for these two regions are among the lowest in the country. Hence, it is appropriate to utilize these geographically defined data sets in the mileage rate calculations.

The record reveals that fuel prices and other factors impacting hauling prices have increased greatly since the establishment of transportation credits. Specifically, the record indicates that current diesel fuel prices exceed those prices that prevailed when transportation credit provisions were first implemented in 1996 and amended in 1997. The national average diesel fuel prices in mid-1997 were reported to be approximately $1.15 to $1.17 per gallon, while the national average diesel fuel price in mid-2005 was reported to be $2.20 to $2.50 per gallon. Additionally, while diesel fuel prices have increased, all other costs impacting hauling have also increased. According to the record, EIA data indicates that hauling costs ranged from $1.75 to $1.80 per loaded mile in 1997 and were about $2.35 per loaded mile in January 2006. Establishing a reference diesel fuel price for the MRF calculation using the EIA retail diesel fuel prices from October to November 2003 data is reasonable. According to the EIA data, national average diesel fuel costs during this period demonstrated price stability relative to any other time between 1997 and 2005.

From October to November 2003, national diesel fuel prices fluctuated by only $0.001. Specifically, diesel fuel prices averaged $1.48125 per gallon in October 2003 and $1.48225 per gallon in November 2003. Similarly, the record shows that, for both the Lower Atlantic and Gulf Coasts, diesel fuel prices ranged from $1.4210 to $1.43075 per gallon between October and November 2003. The stability of diesel fuel prices during October to November 2003 supports this period as a reasonable point in time for use in determining a reference diesel fuel price. Therefore, the record supports using $1.42 per gallon as the reference diesel price in the MRF calculation.

Evidence submitted by SMA provides a basis for the determination of a reference average hauling cost per loaded mile as a component for determining the MRF. The evidence consisted of data randomly selected from actual hauler bills paid to cooperatives during October and November 2003, and October and November 2005. The record supports the use of hauling cost data from October and November 2003 as a basis for the calculation of a reference hauling cost in the MRF consistent with the time frame used for the reference diesel price.

The randomly selected hauling bills depict actual origination and destination points of the milk hauled, miles traveled, and the rates and fuel surcharges per loaded mile for each bill. For the month of October 2005, the data indicate that hauling costs ranged from $1.89 to $2.70 per loaded mile, with an average cost of $2.48 per loaded mile. Data also show that the simple average hauling rate charged per loaded mile in the Southeast marketing area was $1.9332 and $1.8913 in October and November 2003, respectively, yielding a two-month simple average cost of $1.9122 per loaded mile. Therefore, it is reasonable to conclude that a reference hauling rate of $1.91 per loaded mile be used as a component in the MRF calculations.[3]

Another component needed in the calculation of the MRF is the average number of miles traveled per gallon of fuel used in transporting milk.

[2] 62 FR 39738.

[3] It should be noted that as a result of the Emergency Hurricane hearing held for the Appalachian, Florida and Southeast marketing orders during the fall of 2004, a reasonable haul rate used to determine how handlers would be compensated for the transportation costs of extraordinary movements of milk was established for a temporary time period. Specifically, a maximum of $2.25 per loaded mile hauling rate was established (69 FR 71697).

Combination truck fuel economy data, regularly maintained by the United States Department of Transportation, indicates that the average miles per gallon for a combination truck was 5.2 in 2002; and 5.1 in 2003. The record also consists of testimony revealing that the dairy industry typically estimates fuel economy at between 5.0–6.0 miles per gallon. Therefore, given that 5.5 miles per gallon is the median point, and the goal of this decision is to promote efficiencies, the record finds that a 5.5-mile per gallon fuel consumption rate is reasonable and should be used to compute the MRF.

The record also supports the use of 48,000 pounds as a reasonable reference load size for determining the MRF. Data reveal that a 5,600 gallon tanker truck at maximum capacity can carry 48,160 pounds of milk. Therefore, 48,000 pounds is appropriate for use as the reference load size component in calculating the MRF.

Proposal 3 would calculate the MRF by averaging the four most recent weeks of weekly retail on-highway diesel prices for both the Lower Atlantic and Gulf Coast, as reported by the EIA. Record evidence supports announcing the monthly MRF at the same time as Advanced Class Prices, on or before the 23rd of the month. This way, handlers will know in advance the rate at which transportation credits will be paid.

Table 1 shows an example of the calculation of the MRF to be used in the transportation credit provisions:

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**Table 1 -- Example of the Calculation of the Transportation Credit Mileage Rate Factor (MRF) For July 2011 [1].**

| EIA Weekly Retail On-Highway Diesel Fuel Prices [2] | Lower Atlantic | Gulf Coast |
|---|---|---|
| **5/23/2011** | 3.943 | 3.935 |
| **5/30/2011** | 3.897 | 3.884 |
| **6/06/2011** | 3.891 | 3.877 |
| **6/13/2011** | 3.905 | 3.896 |

| | | | |
|---|---|---|---|
| **Monthly average diesel fuel price [3]:** | | **$ 3.904** | **per gallon** |
| Reference diesel fuel price: | - | $ 1.420 | per gallon |
| Fuel price difference [4]: | | $ 2.484 | per gallon |
| Reference truck fuel use: | ÷ | 5.5 | miles per gallon |
| Fuel cost adjustment factor [5]: | | $ 0.451 | per loaded mile |
| Reference haul cost: | + | $ 1.910 | per loaded mile |
| Fuel-adjusted haul cost [6]: | | $ 2.362 | per loaded mile |
| Reference load size: | ÷ | 48,000 | pounds |
| **July 2011 Mileage Rate Factor [7]:** | | **$ 0.00492** | **dollars per cwt per mile** |

1 As announced on June 17, 2011, with the Announcement of Advanced Class Prices.

2 Dollars per gallon. Reported every Monday by the Energy Information Administration of the U.S. Department of Energy.

3 Calculated by rounding down to three decimal places the average of the four most recent weeks of retail on-highway diesel fuel prices for the Lower Atlantic and Gulf Coast EIA regions combined prior to the Advanced Class Price announcement.

4 Calculated by subtracting the reference diesel fuel price of $1.42 per gallon from the calculated average diesel fuel price for the month.

5 Calculated by dividing the fuel price difference by 5.5 miles per gallon fuel use and rounding down to three decimal places.

6 Calculated by adding fuel cost adjustment factor for the month to the reference haul cost of $1.91 per loaded mile.

7 Calculated by dividing the fuel-adjusted haul cost by the number of hundredweights (cwt's) on the reference load size (48,000 pounds = 480 cwt's) and rounding down to five decimal places.

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Concern exists that relying on a variable MRF may result in reimbursing the total, rather than a portion, of the hauling costs on supplemental milk. In this regard, a variable MRF that is consistent and reflective of the original intent of the transportation credit provisions of the Appalachian and Southeast orders is necessary. As already discussed, approximately 94 to 95 percent of the total transportation costs on supplemental milk were covered by the TCBF payments for both orders in 1997. However, the record reveals that for 2005, 53 percent and 42 percent of the total transportation costs for the Appalachian and Southeast orders, respectively, were covered by TCBF payments.

Due to a number of unknown variables, it is not possible to predetermine the percent of the total transportation costs that will be reimbursed by TCBF payments. However, the transportation credit provisions already contain precautionary measures for how the MRF is calculated. The record indicates that reference diesel fuel prices and reference hauling costs per loaded mile are components of the mileage rate calculation and are based on 2003 data that are more current than the data considered and adopted in 1997 establishing a fixed mileage rate. Finally, current transportation credit provisions do not include the first 85 miles that supplemental milk is shipped from farms in determining the total miles shipped. This feature also plays a part to safeguard against excessive transportation credit payments.

**Maximum Assessment Rates**

This decision continues to find that the transportation credit assessment rate in the Appalachian order should be increased to $0.15 per cwt on all Class I milk pooled.[4]

As discussed earlier in this decision, transportation credit provisions of the Appalachian and Southeast orders were originally established to partially offset the cost of transporting supplemental milk supplies into each marketing area to meet fluid milk demands. The transportation credit assessment rates have been increased twice in an effort to ensure that the TCBF would be sufficient to meet the expected claims. When first established for the Appalachian, Southeast, and predecessor orders (Orders 5, 7, 11 and 46), the maximum transportation credit assessment charged to Class I handlers was $0.06 per cwt for each order. The first increase, adopted in 1997, raised the maximum assessment by $0.005 per cwt for the Appalachian order and by $0.01 per cwt for the Southeast order.[5] The second increase in the maximum assessment rates for both orders became effective in November 2005.[6] The maximum assessment rates for both orders were increased by $0.03 per cwt, from $0.065 to $0.095 per cwt for the Appalachian order, and from $0.070 to $0.10 per cwt for the Southeast order.

The hearing record reveals that the Appalachian order was able to pay all transportation credit claims for every month since implementation through September 2004. For the remainder of 2004, the Appalachian Market Administrator began prorating the transportation credit payments.

Specifically, the record shows that for the Appalachian order, 41, 39, and 43 percent of the transportation credit claims were paid in October, November, and December of 2004, respectively. The Appalachian order paid 90 percent and 31 percent of the claims in September and October of 2005, respectively. Despite the assessment rate increase that became effective November 2005, the evidence indicates that only 58 percent of the transportation credit claims for the Appalachian order were paid. Table 2 below illustrates the percent paid from the TCBF for the Appalachian order:

TABLE 2—PERCENT OF TRANSPORTATION CREDITS PAID

[Percent of Transportation Credits Paid]

| | Appalachian marketing area FO 5 |
|---|---|
| Jul 04 | 100.0 |
| Aug 04 | 100.0 |
| Sep 04 | 100.0 |
| Oct 04 | 40.6 |
| Nov 04 | 39.0 |
| Dec 04 | 45.7 |
| Jul 05 | 100.0 |
| Aug 05 | 100.0 |
| Sep 05 | 91.9 |
| Oct 05 | 30.6 |
| Nov 05 * | 58.5 |

* Effective November 1, 2005, the transportation credit assessment rates were increased by 3 cents for the Appalachian order.

*Source:* Appalachian Market Administrator data.

The record demonstrates that at a transportation credit mileage rate of $0.0035 per cwt per mile, the TCBF assessment for Appalachian marketing area has been insufficient to pay all transportation credit claims, especially during the time when payment of credits was most needed. Preventing the prorating of the transportation credit reimbursement payments would have required a higher assessment rate. Evidence submitted by the SMA witness showed that the maximum transportation credit assessment rate for the Appalachian order would have needed to be $0.0889 and $0.0953 per cwt, for 2004 and 2005, respectively. Such evidence further supports the need to increase the transportation credit assessment rate.

The adoption of the variable MRF that is calculated and adjusted with changes in diesel fuel prices (as presented in Proposal 3), will most likely increase the current mileage rate of $0.035 per cwt per mile. Relying on EIA data, the record reveals that applying the calculated mileage rates to the months of July through December 2005 would have resulted in transportation credit mileage rates ranging from $0.0432 to$ 0.0461 per cwt per mile for both orders. If a transportation credit mileage reimbursement rate of $0.046 per cwt per mile had been in place, rather than the current rate of $0.035 cents per cwt, the maximum transportation credit assessments needed for the Appalachian order to ensure that the TCBF covered all claims, would have been $0.133 and $0.1415 per cwt for 2004 and 2005, respectively. This analysis supports concluding, and this final decision continues to find, that increasing the Appalachian order maximum transportation credit assessment rate, as contained in Proposal 1, by $0.055, to $0.15 per cwt is warranted.

Precautionary measures, which decrease the likelihood that the rate of assessments occurs in excess of actual handler claims, are currently provided for within the transportation credit provisions of the orders. The transportation credit provisions provide the market administrator the authority to reduce or waive assessments as necessary to maintain sufficient fund balances for the payment of the transportation credits requested. Therefore, increasing the maximum transportation credit assessment rate will not result in an accumulation of funds beyond what is needed to pay transportation credit claims and no additional precautionary measures are necessary beyond those currently provided.

The record supports concluding that local milk production is expected to continue declining within both marketing areas and will result in an even greater reliance on supplemental milk to meet the fluid milk needs of the

[4] The Southeast order transportation credit assessment rate has subsequently been increased in a separate rulemaking proceeding (73 FR 14153).

[5] 62 FR 39738.

[6] 70 FR 59221.

markets. Record evidence shows a constant increase in both the volume and the distance, from which supplemental milk supplies are obtained. It is reasonable to conclude that future transportation credit claims will increase. In this regard, it is important to prevent exhausting the TCBF before the payment of claims on the supplemental milk have been met. Doing so is consistent with the fundamental purposes of the transportation credit provisions. Therefore, increasing the transportation credit assessment rate as contained in Proposal 1, will better assure that the rate of assessments will keep pace with the payments from the TCBF.

**Diversion Limit Standard for Supplemental Milk**

The intent of a proposal offered by Dean, published in the hearing notice as Proposal 4, seeks to provide a method to limit the amount of additional milk being pooled by diversion on the Appalachian and Southeast orders. As proposed, Dean's proposal would change the amount of transportation credits paid on eligible supplemental milk depending on the amount of milk delivered to plants other than pool distributing plants—this includes diversions to plants located outside of the marketing areas and deliveries to pool supply plants. Simply put, the greater the volume of diversions, the lower the amount of transportation credits paid. In this regard, Dean's proposal attempts to provide an incentive to limit diversions *indirectly* by reducing transportation credits paid on supplemental milk. This decision agrees with the need to limit pooling diverted milk on the orders that is linked to supplemental milk deliveries to distributing plants. Rather than attempt to create disincentives to pooling diverted milk indirectly, this decision addresses the issue *directly* by adopting a zero diversion limit standard on supplemental milk deliveries to distributing plants that receive transportation credits.

The record reveals that the volume of supplemental milk needed to serve the Class I needs of the marketing areas has grown over time and is expected to continue growing. Supplemental milk is representing a greater percentage of the Southeast market's total Class I utilization. The record reveals that for the months of July through December, supplemental milk accounted for 16 percent of total Class I utilization in 2004. For 2005, such supplemental milk as a percent of total Class I utilization increased to 19 percent.

In addition, the record indicates that, for the Southeast marketing area, the monthly weighted average distance supplemental milk eligible to receive transportation credits traveled ranged from 578 to 627 miles, during July through December 2000. During July through November 2005, the weighted average distance increased, ranging from 682 to 755 miles. The amount of supplemental milk receiving transportation credits during 2005 was nearly 686 million pounds. In 2000 and 2004 the amounts were 363 million and 541 million, respectively. This represents an 89 percent increase in the amount of supplemental milk receiving transportation credits from 2000 to 2005 and a 27 percent increase since 2004.

For the Southeast order, the record reveals that total diversions at locations outside of the Appalachian and Southeast marketing areas totaled 883.4 million pounds in 2004. Total diversions outside of the marketing areas for 2005, not including the months of November and December, were 965.6 million pounds, an increase of 9.3 percent from 2004. Such data for November and December 2005 are not contained in the record. For the months of January through June, when transportation credits *are not* available, total diversions outside the marketing areas increased almost 18 percent from 2004 to 2005. During the time period of July through October, when transportation credits *are* available, such diversions increased over 27 percent from 2004 to 2005. It is reasonable, given the trend of the data, that the percentage increase from 2004 would have been greater than 27 percent if data had been available for the months of November and December 2005.

It is reasonable to conclude that diversions outside the Appalachian and Southeast marketing areas are most likely attributed to supplemental milk that is eligible to receive transportation credits. The record reveals that for the Southeast marketing area, the 27 percent increase in the amount of milk receiving transportation credits from 2004 through 2005 corresponds with the 27 percent increase of diversions outside the marketing areas between 2004 and 2005. It is also reasonable to conclude from the record that it is in the interest of the handler supplying supplemental milk, and in this case, the cooperatives in their capacity as handlers, to maximize the value of diversions. Doing so would require pooling the maximum amount of diverted milk to the closest location from where supplemental milk was sourced. Therefore, relying on data provided by the Market Administrator for the Southeast marketing area for the months when transportation credits are available, the calculated total maximum diverted pounds associated with supplemental milk would have totaled over 178 million pounds in 2004, and over 226 million pounds in 2005. On the basis of these calculations, an estimate of diversions attributed to supplemental milk is 64 percent of total diversions for both 2004 and 2005, ranging from 56 percent to 77 percent of the total known diversions outside the marketing areas.

The contribution from diversions associated with supplemental milk as compared to total outside diversions is nearly three times greater than the contribution of the supplemental milk to Class I utilization. As previously discussed, for 2004 and 2005, supplemental milk represented about 15.9 and 19 percent, respectively, of total Class I utilization. However, estimated diversions attributable to supplemental milk represent approximately 64 percent of total diversions. Clearly, not only do transportation credits offset the costs of hauling supplemental milk to the markets, they also contribute to pooling much more milk on the orders through the diversion process.

For the Appalachian order, data contained in the record is much more limited for determining the diversions arising from transportation credit eligible supplemental milk. What can be reasonably concluded is that the pooling of diverted milk linked to supplemental milk is not occurring on nearly the magnitude as is the case for the Southeast order. For the Appalachian order, evidence indicates that total diversions at locations outside of the Appalachian and Southeast marketing areas, for the time period of January through June, increased by 64.4 percent from 2004 to 2005. Total diversions from the time period of July through November, when transportation credits are available, decreased over 20 percent from 2004 to 2005.

For the Appalachian order, only 2 months of data—October and November 2005—is available to estimate the maximum diversions that could be associated with supplemental milk. Relying on Appalachian Market Administrator data, it is estimated that the maximum diversions from transportation credit eligible milk during October and November 2005 were approximately 34 percent and 28 percent, respectively, of the total diversions at locations outside the Appalachian and Southeast marketing areas. Supplemental milk on the Appalachian order for October and

November 2005 was approximately 19 percent, and 16 percent, respectively, of the total Class I milk pooled.

Pooling the diversions of this milk differs from pooling diverted milk that is part of the regular supply of milk of the marketing area. Pooling diverted milk associated with transportation credit eligible supplemental milk, allows more milk to be pooled on the order than normal. Pooling this milk is different than pooling milk that is part of the regular supply for the marketing area. The difference is that producers of milk eligible to receive transportation credits *are not* a part of the regular and consistent supply of milk that serves the Class I needs of the markets. In fact, transportation credit qualifying criteria *exclude* the milk of producers who are regularly pooled on the orders. These producers are, therefore, supplemental suppliers of milk to the Appalachian and Southeast marketing areas.

Pooling diverted milk arising from supplemental milk eligible to receive transportation credits not only offsets the intended benefit of increasing the supply of milk for fluid uses, it also lowers blend prices to those producers who regularly and consistently supply the Class I needs of the markets. Higher blend prices provide important economic signals—the incentive to: (1) Continue supplying the markets; (2) increase local production; and (3) attract the milk of producers to become regular and consistent suppliers.

Lowering blend prices received by producers who regularly supply the markets relative to producers who supply supplemental milk sends contradictory pricing signals. Lower blend prices do not send the proper price signals to local producers to increase local production or to continue supplying the Class I needs of the markets. Furthermore, lower blend prices fail to create the price signals necessary to attract a regular and consistent milk supply.

The availability of transportation credits on supplemental milk has clearly provided a platform to pool additional diverted milk at locations distant to the marketing areas. Milk diverted from supplemental producers is more likely to be diverted at locations far from the marketing areas. The record reveals that suppliers of the supplemental milk to the Appalachian and Southeast marketing areas pool diverted milk at locations as far away as California and Utah. Supplemental milk suppliers benefit in three ways: (1) Receiving reimbursement for costs of transporting milk to the deficit markets; (2) receiving cost savings from the diverted milk not transported to the marketing areas; and (3) receiving higher blend prices on the diverted milk that would have otherwise been pooled on a different order with a typically lower blend price.

The pooling of milk that is not part of the regular and consistent supply of milk which serves the Class I needs of the market is contradictory to the intent of an order's pooling standards and provisions. The pooling standards of the orders serve to identify the milk of producers who regularly and consistently serve the Class I needs of the marketing areas. Pooling milk that is available but not immediately needed for Class I use is provided through diversion limit standards. Diversion limit standards provide the criteria for determining how much additional milk can be pooled on the orders. Diverted milk in this context reflects the legitimate reserve supply of milk available to serve the Class I needs of the marketing areas and, therefore, receives the blend price of the orders.

Since implementation of Federal milk order reform, there have been many formal rulemakings that have amended orders to more properly identify the milk of producers which should and should not be pooled on the orders. The milk of producers who are the consistent and reliable suppliers serving the Class I needs of the market should be pooled even when it is not immediately needed for Class I use. However, this foundational principle of orderly marketing in milk marketing orders is essentially disregarded for 6 months each year when the orders allow the pooling of diverted milk from producers who are specifically identified as not being ''producers'' under either of the orders.

The lowering of blend prices by pooling such diverted milk is an unintended outcome not foreseen when the transportation credit provisions of the Appalachian and Southeast orders were implemented and amended. As the blend prices are reduced so is the incentive for local milk production. The markets become less capable of supplying their own Class I needs and supplemental milk supplies needed to meet Class I needs are not likely to be supplied without reliance on additional transportation credits.

The pooling of diverted milk associated with supplemental milk would seem to offer substantial benefits to cooperative suppliers. The record reveals that when transportation credits were first implemented, well over 90 percent of hauling costs were offset. The record further reveals that more recent conditions suggest that only about 45 percent is being reimbursed. This clearly represents a burden borne by the cooperatives supplying supplemental milk.

Pooling diverted milk at locations far from the marketing areas based on supplemental milk eligible to receive transportation credits would provide additional revenue to help offset hauling costs not covered by the current transportation credit assessment rates. This diverted milk receives the blend price of the order where it is pooled. The benefit is that the blend price received on such diverted milk, on either the Appalachian or Southeast order, is historically higher than the price the milk would otherwise receive.

As presented above, this final decision adopts a variable mileage rate factor that will reimburse hauling costs at a level more reflective of actual costs, in addition to a significantly higher transportation credit assessment. To the extent that it is necessary to offset the higher costs of transporting supplemental milk, the adoption of a variable MRF and the increase in the transportation credit assessment rates should significantly reduce or eliminate the need to seek generating revenue to offset hauling costs at the expense of the producers who are regularly and consistently supplying milk to meet the Class I needs of the two marketing areas.

LOL took exception with the proposed zero diversion limit standard arguing that it would shift the burden of balancing the southeastern markets' seasonal milk needs onto the markets' supplemental milk suppliers. LOL also argued that USDA should provide an analysis to verify that adoption of this standard would, in fact, increase the orders' blend prices.

The transportation credit provisions of the Southeast and Appalachian orders are designed to attract supplemental milk supplies for Class I use when the orders' regular supplies cannot meet demand. Supplemental suppliers choose to provide this service and are subsequently compensated by receiving the orders' blend price and the ability to receive a transportation credit to reimburse them for part of the hauling cost. If, at any time, a supplemental supplier does not believe they are adequately compensated for their service, they may cease providing supplemental supplies. This decision continues to find that allowing milk diversions on supplemental milk supplies receiving a transportation credit lowers the TCBF monies available to supplemental milk loads that are actually delivered to the southeastern markets, and ultimately decreases the blend price paid to the orders' producers. A quantitative assessment is

not necessary to conclude that the pooling of this diverted milk on the orders is disorderly and should not occur.

**Rulings on Proposed Findings and Conclusions**

Briefs, proposed findings, and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreements and orders:

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing have been held.

**Rulings on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents—a Marketing Agreement regulating the handling of milk and an Order amending the order regulating the handling of milk in the Appalachian and Southeast marketing areas, that was approved by producers and published in the **Federal Register** on October 25, 2006 (71 FR 62377). These documents have decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered* that this entire decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

**Determination of Producer Approval and Representative Period**

The month of July 2013 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian and Southeast marketing areas is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

**List of Subjects in 7 CFR Parts 1005 and 1007**

Milk Marketing Orders.

**Order Amending the Order Regulating the Handling of Milk in the Appalachian and Southeast Marketing Areas**

This order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

**Order Relative to Handling**

*It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Appalachian and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

For the reasons set forth in the preamble, 7 CFR parts 1005 and 1007 are proposed to be amended as follows:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

## PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. Section 1005.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

**§ 1005.13 Producer milk.**

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a

cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

* * * * *

■ 3. Section 1005.81 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would had been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

■ 4. Section 1005.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

**§ 1005.82 Payments from the transportation credit balancing fund.**

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

■ 5. Add Section 1005.83 to read as follows:

**§ 1005.83 Mileage Rate for the Transportation Credit Balancing Fund.**

(a) The market administrator shall compute a mileage rate each month as follows:

(1) Compute the simple average rounded to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the mileage rate pursuant to paragraph (a) of this section for the following month.

## PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 6. Section 1007.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

**§ 1007.13 Producer milk.**

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in section 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in section 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

■ 7. Section 1007.81 is amended by revising paragraph (b) to read as follows:

**§ 1007.81 Payments to the transportation credit balancing fund.**

* * * * *

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment pursuant to paragraph (a) of this section for the following month.

■ 8. Section 1007.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

**§ 1007.82 Payments from the transportation credit balancing fund.**

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1007.83(a)(6); * * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

* * * * *

■ 9. Add a new Section 1007.83 to read as follows:

**§ 1007.83 Mileage Rate for the Transportation Credit Balancing Fund.**

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the MRF.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the mileage rate pursuant to paragraph (a) of this section for the following month.

[This marketing agreement will not appear in the Code of Federal Regulations.]

**Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas**

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § ____ to ____[7] all inclusive, of the order regulating the handling of milk in the _____[8] marketing area (7 CFR Part ____[9]) which is annexed hereto; and

II. The following provisions: § ____[10] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____,[11] _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Sec. 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

Dated: February 25, 2014.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2014–04693 Filed 3–6–14; 8:45 am]

BILLING CODE 3410–02–P

[7] First and last section of order.

[8] Name of order.

[9] Appropriate Part number.

[10] Next consecutive section number.

[11] Appropriate representative period for the order.

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 72

**[NRC–2013–0051]**

## Shielding and Radiation Protection Review Effort and Licensing Conditions for Dry Storage Applications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft interim staff guidance; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is announcing the withdrawal of draft Spent Fuel Storage and Transportation Interim Staff Guidance No. 26A (SFST–ISG–26A), Revision 0, ''Shielding and Radiation Protection Review Effort and Licensing Parameters for 10 CFR Part 72 Applications.''

**DATES:** The withdrawal is effective as of March 7, 2014.

**ADDRESSES:** Please refer to Docket ID NRC–2013–0051 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0051. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft SFST–ISG–26A, Revision 0 is available electronically under ADAMS Accession No. ML13010A570.
- *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:** Mr. Michel Call, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9183; email: *Michel.Call@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Draft SFST–ISG–26A proposed guidance for the NRC staff to use when reviewing the shielding and radiation protection portions of applications for certificates of compliance (CoC), specific licenses, and amendments

submitted in accordance with part 72 of Title 10 of the Code of Federal Regulations (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' (10 CFR part 72) Subpart L, ''Approval of Spent Fuel Storage Casks,'' and Subpart B, ''License Application, Form, and Contents.'' Draft SFST–ISG–26A proposed to revise the shielding and radiation protection review procedures contained in NUREG–1536, Revision 1, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility,'' and NUREG–1567, ''Standard Review Plan for Spent Fuel Dry Storage Facilities.''

The staff began writing draft SFST–ISG–26A as a response to an event involving the use of a high dose-rate transfer cask. Its first intent was to provide reviewers guidance on how to review these systems. The scope had been expanded to also provide NRC reviewers with guidance on performing graded reviews based on system dose rates which modify the review ''priority'' as defined in NUREG–1536. The staff developed this part of the ISG in response to industry comments regarding the amount of details the staff reviewed in response to a 10 CFR part 72 license, certificate or amendment application.

The staff published a notice of opportunity for public comment on draft SFST–ISG–26A in the **Federal Register** on March 29, 2013 (78 FR19148). The staff received two comments, with each commenter raising a significant number of substantive issues which has caused the staff to reconsider the need for and the clarity of the guidance.

## II. Discussion

The staff considered the comments and has decided to defer pursuing action on the draft ISG. Thus, draft SFST–ISG–26A is being withdrawn. From the comments received, the staff concluded that the guidance as written is not clear and would require substantial revision to be well understood as well as meet the needs of the staff. Although the staff still finds that guidance regarding the issues addressed in draft SFST–ISG–26A would be useful, especially in relation to high dose-rate transfer casks, there are recent developments that also touch on some of these issues that the staff finds are appropriate to pursue in lieu of the ISG. This includes the staff's consideration of a petition to make changes to 10 CFR Part 72 (PRM–72–7) and the staff's consideration of an update to NUREG–1745, ''Standard Format and Content for Technical Specifications for 10 CFR part 72 Cask Certificates of Compliance.''

The staff finds withdrawing the draft ISG is appropriate considering the initiating event that caused the staff to write draft SFST–ISG–26A has thus far been an isolated event from several years ago, and the staff has not seen any applications for the use of high dose-rate transfer casks since then. However, the staff will continue to monitor for events or actions (particularly those involving transfer casks) that may indicate there is a need for the ISG prior to completion of, or in addition to, the other efforts.

With regard to the review procedure priority levels, the staff currently finds that the generic priority levels in NUREG–1536 sufficiently meet the staff's commitment of ensuring the appropriate level of effort for these reviews. However, the staff will also monitor the use of these procedures to determine any further need for enhancement.

Dated at Rockville, Maryland, this 24th day of February 2014.

For the Nuclear Regulatory Commission.

**Mark D. Lombard,**

*Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2014–05017 Filed 3–6–14; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2014–0137; Directorate Identifier 2013–NM–135–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes; Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This proposed AD was prompted by reports of rupture of the uplock springs of the nose landing gear (NLG) and main landing gear (MLG) doors and legs. This proposed AD would require repetitive inspections of the uplock springs of the NLG and MLG doors and legs for broken and damaged springs, and corrective actions if necessary. We are proposing this AD to detect and correct improper free fall extension of the MLG or NLG, which could lead to possible loss of control of the airplane on the ground, and consequent damage to the airplane and injury to occupants.

**DATES:** We must receive comments on this proposed AD by April 21, 2014.

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

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

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

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0137; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA,

1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0137; Directorate Identifier 2013–NM–135–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0150, dated July 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of Nose Landing Gear (NLG) and Main Landing Gear (MLG) Door and Leg Uplock spring ruptures on A300, A310 or A300–600 aeroplanes have been reported in service.
>
> Springs within the uplock are used to either lock the gear or the door in the up position, or to participate in emergency mechanical unlocking.
>
> The springs are positioned in pairs, and in case of rupture of one spring the other one remains to fulfill the function, whereas the rupture of both springs will disable the locking function or the emergency unlocking function.
>
> This condition, if not detected and corrected, could prevent proper free fall extension of the MLG or NLG, possibly leading to loss of control of the aeroplane on the ground, consequently resulting in damage to the aeroplane and injury to occupants.
>
> For the reason described above, this [EASA] AD requires [repetitive] detailed visual inspection[s] of the NLG and MLG Door and Leg Uplock springs [for broken and damaged springs] and, depending of findings, their replacement.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0137.

## Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–32–0465, A300–32–6111, and A310–32–2147, all Revision 01, all dated April 25, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of this Proposed AD

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

## Costs of Compliance

We estimate that this proposed AD affects 156 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Repetitive inspections ..... | 1 work-hour × $85 per hour = $85 per inspection .. | $0 | $85 per inspection ..... | $13,260 per inspection. |

In addition, we estimate that any necessary replacement would take about 9 work-hours for a cost of $765 per product. The cost of parts is minimal. We have no way of determining the number of aircraft that might need this action.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus:** Docket No. FAA–2014–0137; Directorate Identifier 2013–NM–135–AD.

**(a) Comments Due Date**

We must receive comments by April 21, 2014.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus airplanes specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) of this AD; certificated in any category; all serial numbers.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A300 C4–605R Variant F airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Reason**

This AD was prompted by reports of rupture of the uplock springs of the nose landing gear (NLG) and main landing gear (MLG) doors and legs. We are issuing this AD to detect and correct improper free fall extension of the MLG or NLG, which could lead to possible loss of control of the airplane on the ground, and consequent damage to the airplane and injury to occupants.

**(f) Compliance**

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

**(g) Repetitive Inspections**

Within 18 months after the effective date of this AD: Perform a detailed inspection of the uplock springs of the MLG and NLG legs and doors for broken and damaged springs, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 18 months.

(1) Airbus Mandatory Service Bulletin A300–32–0465, Revision 01, dated April 25, 2013 (for Model A300 series airplanes).

(2) Airbus Mandatory Service Bulletin A300–32–6111, Revision 01, dated April 25, 2013 (for Model A300–600 series airplanes).

(3) Airbus Mandatory Service Bulletin A310–32–2147, Revision 01, dated April 25, 2013 (for Model A310 series airplanes).

**(h) Corrective Actions**

The corrective actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD do not constitute terminating actions for the repetitive inspections required by paragraph (g) of this AD.

(1) If, during any inspection required by paragraph (g) of this AD, one spring on the MLG or NLG door uplock is found broken or damaged, within 2 months after the inspection, replace the affected MLG or NLG door uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(2) If, during any inspection required by paragraph (g) of this AD, one spring on the MLG or NLG leg uplock is found broken or damaged, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 50 flight cycles. Replacement of any affected leg uplock, as required by paragraph (h)(2)(i) or (h)(2)(ii) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraph (h)(2) of this AD.

(i) If, during any inspection required by paragraph (h)(2) of this AD, the second free fall spring on the MLG or NLG leg uplock is found broken or damaged, before further flight, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(ii) Within 1,000 flight cycles after doing the inspection required by paragraph (g) of this AD during which the spring has been found broken, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(3) If, during any inspection required by paragraph (g) of this AD, two free fall springs on the same MLG or NLG leg uplock are found broken or damaged, before further flight, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

**(i) Credit for Previous Actions**

This paragraph provides credit for the applicable actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A300–32–0465, dated July 20, 2012.

(2) Airbus Mandatory Service Bulletin A300–32–6111, dated July 20, 2012.

(3) Airbus Mandatory Service Bulletin A310–32–2147, dated July 20, 2012.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0150, dated July 16, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0137.

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

Issued in Renton, Washington, on February 26, 2014.

**Jeffrey E. Duven,**

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

[FR Doc. 2014–04955 Filed 3–6–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket No. OSHA–2013–0020]**

**RIN No. 1218–AC82**

## Process Safety Management and Prevention of Major Chemical Accidents; Extension of Comment Period

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for information; extension of comment period.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is extending the deadline for submitting comments on the Request for Information on Process Safety Management and Prevention of Major Chemical Accidents.

**DATES:** The comment due date for the proposed rule published in the **Federal Register** on December 9, 2013 (78 FR 73756) is extended. Comments must be submitted (postmarked, sent, or received) by March 31, 2014.

**ADDRESSES:** Submit comments and additional material using any of the following methods:

*Electronically:* Submit comments along with attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Click on the ''COMMENT NOW!'' box next to the title ''Process Safety Management and Prevention of Major Chemical Accidents'' and follow the instructions on-line for making electronic submissions.

*Fax:* Commenters may fax submissions, including attachments, that are not longer than 10 pages to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* Submit comments to the OSHA Docket Office, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The Docket Office accepts deliveries (hand, express mail, messenger, or courier service) during normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the docket number for this rulemaking (Docket No. OSHA–2013–0020). OSHA places all comments, including any personal information provided, in the public docket without change and this information will be available online at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and birthdates. Security-related procedures may significantly delay receipt of submissions sent by regular mail. Contact the Docket Office for information about security-related procedures.

*Docket:* To read or download comments submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2013–0020 at *http://www.regulations.gov* or to the OSHA Docket Office at the address above. All comments and submissions 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 that Web site. All comments and submissions are available for inspection and, when permissible, copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:**

*General information and press inquiries:* Contact Frank Meilinger, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*Technical inquiries:* Contact Lisa Long, Director, Office of Engineering Safety, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2222 or email: *long.lisa@dol.gov.*

*Copies of this Federal Register notice:* Electronic copies of this **Federal Register** notice are available at *http://regulations.gov.* Copies also are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1888. This notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

OSHA published a request for information (RFI) on December 09, 2013, on Process Safety Management and Prevention of Major Chemical Accidents (78 FR 73756) in response to Section 6(e) of Executive Order 13650: Improving Chemical Facility Safety and Security. The RFI notice requested comments by March 10, 2014. Section 6(a) of the Executive Order requests public input on options for policy, regulation, and standards modernization. The comment period for Section 6(a) runs until March 31, 2014. OSHA received comments from several stakeholders who are preparing responses to the Section 6(a) docket, as well as comments in response to the RFI. These stakeholders noted that much of the subject matter in Section 6(a) is similar to the subject matter addressed by the RFI. Accordingly, the stakeholders requested that the deadline for submitting comments to the RFI correspond to the deadline for the Section 6(a) comment period, which is March 31, 2014, thereby allowing them to prepare complete and accurate comments for both records. Therefore, to allow commenters adequate time to prepare complete and accurate comments to the RFI, OSHA is, with this notice, extending the deadline for submitting comments in response to the RFI to March 31, 2014.[1]

### II. 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 notice pursuant to 29 U.S.C. 653, 655, 657, 40 U.S.C. 333, 33 U.S.C. 941, Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1911.

Signed at Washington, DC, on March 4, 2014.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014–04983 Filed 3–6–14; 8:45 am]

**BILLING CODE 4510–26–P**

[1] Information on the executive order is available at: *http://www.osha.gov/chemicalexecutiveorder/index.html.*

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[EPA–HQ–OAR–2014–0065; FRL–9903–64–OAR]**

**RIN 2060–AR80**

## Protection of Stratospheric Ozone: The 2014 and 2015 Critical Use Exemption from the Phaseout of Methyl Bromide

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing uses that

qualify for the critical use exemption (CUE) and the amount of methyl bromide that may be produced or imported for those uses for both the 2014 and 2015 control periods. EPA is proposing this action under the authority of the Clean Air Act to reflect consensus decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Fourth and Twenty-Fifth Meetings of the Parties. EPA is also proposing to amend the regulatory framework to remove provisions related to sale of pre-phaseout inventory for critical uses. EPA is seeking comment on the list of critical uses, on EPA's determination of the specific amounts of methyl bromide that may be produced and imported for those uses, and on the amendments to the regulatory framework.

**DATES:** Comments must be submitted by April 21, 2014. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on March 12, 2014. If a hearing is requested it will be held on March 24, 2014. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *www.epa.gov/ozone/strathome.html.* Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0065, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Phone:* (202) 566–1742.
- *U.S. Mail:* Docket EPA–HQ–OAR–2014–0065, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460
- *Hand Delivery or Courier:* Docket EPA–HQ–OAR–2014–0065, EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0065. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* 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, 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 form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by email at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar years 2014 and 2015. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is proposing and seeking comment on the uses that will qualify for the critical use exemption as well as specific amounts of methyl bromide that may be produced and imported for proposed critical uses for the 2014 and 2015 control periods. EPA also seeks comment on the amendments to the regulatory framework to remove provisions related to sale of pre-phaseout inventory for critical uses.

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## I. General Information

### *A. Regulated Entities*

Entities and categories of entities potentially regulated by this proposed action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2014 and 2015 critical use exemption including growers of vegetable crops, fruits, and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

### *B. What should I consider when preparing my comments?*

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing Title VI of the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when producing, importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

## III. What Is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol in 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each developed country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze on the level of methyl bromide production and consumption for developed countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance. This rule froze U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This

phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which, for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties agreed to adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for developed countries with exemptions permitted for critical uses. At that time, the United States continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in developed countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for Article 5 countries.

## IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to align the U.S. phaseout of methyl bromide with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a rulemaking on November 28, 2000 (65 FR 70795), which allowed for the reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a rule (the ''Framework Rule'') that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the annual control periods from 2006 to 2012. In the 2013 rule, EPA amended the framework to remove certain requirements related to sale of pre-phaseout inventory for critical uses.

Under authority of section 604(d)(6) of the CAA, EPA is proposing the uses that will qualify as approved critical uses for two separate control periods (2014 and 2015) as well as the amount of methyl bromide that may be produced or imported to satisfy those uses in each of those years. EPA is also proposing to amend the regulatory framework to remove additional provisions related to sale of pre-phaseout inventory for critical uses. The proposed critical uses and amounts for 2014 reflect Decision XXIV/5, taken at the Twenty-Fourth Meeting of the Parties in November 2012. The proposed critical uses and amounts for 2015 reflect Decision XXV/4, taken at the Twenty-Fifth Meeting of the Parties in October 2013.

In accordance with Article 2H(5) of the Montreal Protocol, the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this proposed action. In this proposed rule on critical uses for 2014 and 2015, EPA is honoring commitments made by the United States in the Montreal Protocol context.

## V. What is the critical use exemption process?

### *A. Background of the Process*

Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties in 1997, the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.'' EPA promulgated these criteria in the definition of ''critical use'' at 40 CFR 82.3. In addition, the Parties decided that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

EPA requested critical use exemption applications through **Federal Register** notices published on June 14, 2011 (76 FR 34700) (for the 2014 control period) and on May 17, 2012 (77 FR 29341) (for the 2015 control period). Applicants submitted data on their use of methyl bromide, the technical and economic feasibility of using alternatives, ongoing research programs into the use of alternatives in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide. This assessment process culminates in the development of the U.S. critical use nomination (CUN). Annually since 2003, the U.S.

Department of State has submitted a CUN to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then make Decisions on the authorization of critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. EPA then provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On January 31, 2012, the United States submitted the tenth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2014 critical uses. In February 2012, MBTOC sent questions to the United States concerning technical and economic issues in the 2014 nomination. The United States transmitted responses to MBTOC in March, 2012. In May 2012, the MBTOC provided their interim recommendations on the U.S. nomination in the May TEAP Progress Report. In that report, MBTOC posed questions about the U.S. nominations for dried fruit, dried cured ham, and strawberries. The United States responded to those questions in August 2012. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

On January 24, 2013, the United States submitted the eleventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2015 critical uses. In February and March 2013, MBTOC sent questions to the United States concerning technical and economic issues in the 2015 nomination. The United States transmitted responses to MBTOC in March, 2013. In May 2013, the MBTOC provided its interim recommendations on the U.S. nomination in the May TEAP Progress Report and posed additional questions about the U.S. nominations. The United States responded to those questions in August 2013. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analyses contained in those documents.

*B. How does this proposed rule relate to previous critical use exemption rules?*

The December 23, 2004, Framework Rule established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide, to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (February 6, 2006), 71 FR 75386 (December 14, 2006), 72 FR 74118 (December 28, 2007), 74 FR 19878 (April 30, 2009), 75 FR 23167 (May 3, 2010), 76 FR 60737 (September 30, 2011), 77 FR 29218 (May 17, 2012), and 78 FR 43797 (July 22, 2013).

Unlike in previous years, EPA today proposes critical uses for both 2014 and 2015. EPA is proposing to do so to expedite the issuance of 2015 allowances. EPA has received repeated comments in recent years that a failure to issue CUE allowances in a timely fashion places manufacturers and distributors, who need to plan for the upcoming growing season, in a difficult position. For 2013, the final rule was not effective until July 22, 2013, and EPA recognizes that this late date could cause difficulties for growers as well as manufacturers and distributors. EPA seeks to avoid such difficulties for 2015 by issuing the authorization for that year in this rulemaking.

Today's proposed action continues the approach established in the 2013 rule for determining the amounts of Critical Use Allowances (CUAs) to be allocated for critical uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kilogram (kg) of methyl bromide for an approved critical use during the specified control period. A control period is a calendar year. See 40 CFR 82.3. The two control periods at issue in this rule are 2014 and 2015. Each year's allowances expire at the end of that control period and, as explained in the Framework Rule, are not bankable from one year to the next.

The 2013 Rule also removed from the regulatory framework the restriction that limits the sale of inventory for critical uses through allocations of Critical Stock Allowances (CSA). A CSA was the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period. Under the framework, the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller was prohibited. Today, EPA is proposing to remove all of the remaining provisions in 40 CFR part 82 related to critical stock allowances.

*C. Proposed Critical Uses*

In Decision XXIV/5, taken in November 2012, the Parties to the Protocol agreed ''to permit, for the agreed critical-use categories for 2014 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2014 set forth in table B of the annex to the present decision, which are necessary to satisfy critical uses . . .'' The following uses are those set forth in table A of the annex to Decision XXIV/5 for the United States:

- Commodities
- Mills and food processing structures
- Cured pork
- Strawberry—field

In Decision XXV/4, taken in October 2013, the Parties to the Protocol agreed ''[t]o permit, for the agreed critical-use categories for 2015 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2015 set forth in table B of the annex to the present decision, which are necessary to satisfy critical uses . . .'' The following uses are those set forth in table A of the annex to Decision XXV/4 for the United States:

- Cured pork
- Strawberry—field

EPA is proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXIV/5 and Decision XXV/4. EPA is proposing to amend the table of critical uses and critical users based on the authorizations in Decision XXIV/5 and Decision XXV/4 and the technical analyses contained in the 2014 and 2015 U.S. nominations that assess data

submitted by applicants to the CUE program.

EPA is seeking comment on the technical analyses contained in the U.S. nominations (available for public review in the docket). Specifically, EPA requests information regarding any changes to the registration (including cancellations or registrations), use, or efficacy of alternatives that have occurred after the nominations were submitted. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' may change. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE.

The following are proposed changes to the existing appendix, starting with changes due to the applications and analysis conducted for the 2014 control period. For 2014, EPA is proposing to remove Georgia growers of cucurbits, eggplants, peppers, and tomatoes. These groups did not submit applications for 2014 and therefore were not included in the 2014 U.S. nomination.

EPA is proposing to remove sectors or users that applied for a critical use in 2014 but that the United States did not nominate for 2014. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. As a result of this technical review, the United States Government (USG) determined that certain sectors or users did not meet the critical use criteria in Decision IX/6 and the United States therefore did not include them in the 2014 Critical Use Nomination. EPA notified these sectors of their status by letters dated February 7, 2012. These sectors are orchard replant for California wine grape growers and Florida growers of eggplants, peppers, and tomatoes. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Some sectors that were not included in the 2014 Critical Use Nomination submitted supplemental applications for 2014. These sectors are: The California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; California strawberry nurseries; stored walnuts; and the U.S. Golf Course Superintendents Association. For those sectors the USG came to a decision that the sectors not nominated have not provided rigorous and convincing evidence that they meet the criteria laid out in Decision IX/6, and further that no new problem or large yield/quality loss had been demonstrated that warranted seeking a supplemental authorization from the Parties to the Montreal Protocol.

The following are proposed changes to the existing appendix due to the applications and analysis conducted for the 2015 control period. For 2015 EPA is proposing to remove California wine grape growers and Florida growers of eggplants, peppers, tomatoes, and strawberries. These groups did not submit applications for 2015 and therefore were not included in the 2015 U.S. nomination.

EPA is proposing to remove sectors or users that applied for a critical use in 2015 but that the United States did not nominate for 2015. As described above EPA conducted a thorough technical assessment of each application and the USG determined that certain sectors or users did not meet the critical use criteria. EPA notified these sectors of their status by letters dated March 26, 2013. These sectors are rice millers, pet food manufacturing facilities, members of the North American Millers Association, and California entities storing walnuts, dried plums, figs, and raisins. In addition, EPA is proposing to remove entities storing dates as a critical use for 2015. While the United States nominated this sector for 2015, MBTOC did not recommend that this sector be a critical use in 2015 and the Parties did not authorize this use.

EPA has received supplemental applications for 2015 from sectors that the United States did not nominate for 2015. These sectors are: Michigan cucurbit, eggplant, pepper, and tomato growers; Florida eggplant, pepper, tomato, and strawberry growers; the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; the U.S. Golf Course Superintendents Association; and stored walnuts, dried plums, figs, and raisins in California. The USG is currently reviewing these supplemental applications for 2015 and EPA is not proposing at this time to authorize critical use for these sectors. EPA is not proposing at this time to authorize critical use for these sectors but may take future action as appropriate.

Finally, EPA is adding information to Column B of appendix L to clarify which critical uses are approved for which control periods. EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities refers to instances in which a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

*D. Proposed Critical Use Amounts*

Table A of the annex to Decision XXIV/5 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2014. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXIV/5, is 442,337 kg, minus available stocks. This figure is equivalent to 1.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg.

Similarly, Table A of the annex to Decision XXV/4 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2015. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXV/4, is 376,900 kg, minus available stocks. This figure is equivalent to 1.5% of the U.S. 1991 methyl bromide consumption baseline.

For 2014 and 2015, EPA is proposing to determine the level of new production and import according to the framework and as modified by the 2013 Rule. Under this approach, the amount of new production for each control period would equal the total amount authorized by the Parties to the Montreal Protocol in their Decisions minus any reductions for available stocks, carryover, and the uptake of alternatives. These terms (available stocks, carryover, and the uptake of alternatives) are discussed in detail below. As established in the 2013 Rule, EPA would not allocate critical stock allowances. EPA would still determine whether there are any ''available stocks'' and reduce the new production allocation by that amount. Applying this approach, EPA is proposing to allocate allowances to exempt 442,337 kg of new production and import of methyl bromide for critical uses in 2014 and

376,900 kg of new production and import for 2015.

*Available Stocks:* For 2014 and 2015 the Parties indicated that the United States should use ''available stocks,'' but did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, EPA is considering what amount, if any, of the existing stocks may be available to critical users during 2014 and 2015. The amount of existing stocks reported to EPA as of December 31, 2012, was 627,066 kg.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Both Decision XXIV/5 and Decision XXV/4 state that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks. . . .'' In addition, the Decisions recognize that ''parties operating under critical-use exemptions should take into account the extent to which methyl bromide is available in sufficient quantity and quality from existing stocks. . . .'' Earlier Decisions also refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties may determine their level of available stocks. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In the 2013 CUE Rule (78 FR 43797, July 22, 2013), EPA established an approach that considered whether a percentage of the existing inventory was available. In that rule, EPA took comment on whether 0% or 5% of the existing stocks was available. The final rule found that 0% was available to be allocated for critical use in 2013 for a number of reasons including: A pattern of significant underestimation of inventory drawdown; the increasing concentration of critical users in California while inventory remained distributed nationwide; and the recognition that the agency cannot compel distributors to sell inventory to critical users. For further discussion, please see the 2013 CUE Rule. EPA believes these circumstances remain true for 2014 and 2015.

In addition, the 2013 CUE Rule removed the restriction that critical stock allowances be expended to sell inventory to critical uses. As a result, for the first time in the history of the CUE program, distributors were free to sell their entire remaining inventory to critical users. At this time, EPA is unable to calculate what effect this policy change may have had on the remaining inventory, although the agency will docket end of year inventory data that will be reported to EPA in February 2014. EPA notes that it may be difficult to assess the impact of this change, which went into effect in mid-2013, simply from updated inventory data. EPA solicits comments on whether, and how, to draw inferences as to the availability of stocks for critical uses based on inventory figures as of December 31, 2013, (e.g., whether the magnitude of the reduction in pre-phaseout stocks could be evidence of the degree of availability for critical uses).

For these reasons, EPA is proposing to find 0% of the existing inventory available for 2014 and 2015. EPA specifically invites comment on whether 0% or 5% of existing inventory will be available to critical users in 2014 and/or 2015, taking into consideration the recent history of inventory drawdown, the removal of the critical stock allowance provisions, the quantity and geographical location of authorized uses, and the quantity and location of stocks.

Existing stocks, as of December 31, 2012, were equal to 627,066 kg. Therefore, 5% would be 31,353 kg. Were EPA to find 5% of existing stocks to be available, EPA would reduce the amount of new production for 2014 and/or for 2015 by 31,353 kg. EPA notes that it is not proposing to allocate a corresponding amount of critical stock allowances, as had been the case prior to 2013. EPA removed the requirement to expend critical stock allowances when selling inventory to critical users in the 2013 CUE Rule. EPA notes that it will receive updated end of year inventory data in February 2014. EPA anticipates that inventory will have been further drawn down, and therefore 5% of the existing stocks, based on the updated data, is likely to be significantly less than 31,353 kg. EPA solicits comment on whether, if EPA concludes some portion of existing stocks are ''available,'' EPA should calculate the portion that is available for 2014 and/or 2015 based on the updated data for inventory as of December 31, 2013.

*Carryover Material:* The Parties in paragraph 9 of Decision XXIV/5 ''urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemptions.'' EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption from being added to the existing pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this ''carryover'' from the total level of allowable new production and import in the year following the year of the data report. So for example, the amount of carryover from 2012 is factored into the determination for 2014. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material) because this would lead to a double-counting of carryover amounts.

All critical use methyl bromide that companies reported to be produced or imported in 2012 was sold to end users. 759 MT of critical use methyl bromide was produced or imported in 2012. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was from distributors selling material that was carried over from the prior control period. Therefore, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount for 2014. EPA's calculation of the amount of carryover at the end of 2012 is consistent with the method used in previous CUE rules, and with the format in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2012, are available in the public docket for this rulemaking.

Production, import, and sales data for 2013 will be reported to EPA in February 2014. Without these data, the agency is unable to calculate how, or whether, a reduction for carryover would affect the 2015 allocation amount. However, EPA anticipates that the carryover will remain 0 kg, as it has been at that level since 2009. Based on information available, EPA believes that the demand for critical use methyl bromide continues to be high and all material produced or imported for a particular control period is sold in that control period. Therefore, while the proposed allocation amount for 2015 assumes 0 kg of carryover in 2013, EPA proposes to use the reported data to calculate the actual carryover amount

for 2013, and subtract that amount (if any) from the authorization for new production and import in the final rule.

*Uptake of Alternatives:* EPA considers data on the availability of alternatives that it receives following submission of each nomination to UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered and increased the new production amount when an alternative is withdrawn, but not above the amount authorized by the Parties.

Since the United States submitted the 2014 CUN on January 31, 2012, the California Department of Pesticide Regulation has proposed control measures for the use of chloropicrin with the intent of reducing risk from acute exposures that might occur near fields fumigated with products containing chloropicrin. Because this regulation is at the proposed stage and has not been finalized, EPA is unable to state what effects these changes may have on the availability of methyl bromide alternatives for 2014. It is more likely that the proposed changes to the chloropicrin regulation would affect the 2015 control period and EPA specifically invites comments on the implications for 2015. However EPA is not proposing to make any reductions for either the 2014 or 2015 control periods because of these uncertainties. The critical use exemption program has historically only relied on final actions when determining the availability of alternatives. EPA is not aware of any other actions regarding alternatives that would lead to either an increase or decrease in 2014 and 2015.

EPA is not proposing to make any other modifications to CUE amounts to account for availability of alternatives. Rates of transition to alternatives have already been applied for authorized 2014 and 2015 critical use amounts through the nomination and authorization process. EPA will consider new data received during the comment period and continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

*Allocation Amounts:* EPA is proposing to allocate 2014 critical use allowances for new production or import of methyl bromide equivalent to 442,337 kg. Because EPA is taking comment on finding 5% of existing inventory to be available, EPA is also taking comment on an allocation of 410,984 kg. EPA is also proposing to allocate 2015 critical use allowances for new production or import of methyl bromide equivalent to 376,900 kg. EPA is also taking comment on whether it should find 5% of existing inventory to be available, which would result in an allocation of 345,547 kg. EPA is taking further comment on whether, if EPA concludes some portion of existing stocks are ''available,'' EPA should calculate the portion that is available for 2014 and/or 2015 based on the updated data for inventory to be submitted in February 2014.

EPA is proposing to allocate the 2014 and 2015 allowances to the four companies that hold baseline allowances. The proposed allocations, as in previous years, are in proportion to those baseline amounts, as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). Paragraph 3 of Decision XXIV/5 and paragraph 5 of Decision XXV/4 state that ''parties shall endeavour to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision.'' This is similar to language in prior Decisions authorizing critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The proposed Framework Rule contained several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), and because of the limited number of authorized uses, the agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

### *E. Amending the Critical Stock Allowance Framework*

The 2013 Rule removed the provisions at § 82.4(p)(ii) and (iii) requiring the use of critical stock allowances for sales of inventory to critical users. In addition, EPA made some necessary conforming changes to 40 CFR Part 82, which follow from removing those restrictions including removing the reference to the restriction on selling inventory pursuant to a CSA from the definition of ''critical use methyl bromide.''

The 2013 Rule also stated that EPA believed additional conforming changes may be appropriate but that it would address those changes in a future rulemaking. Today EPA is proposing and taking comment on removing the remaining references to critical stock allowances in 40 CFR Part 82. EPA believes these provisions are no longer necessary if the agency is not allocating separate critical stock allowances. Specifically, EPA is proposing to remove the definitions of ''critical stock allowance,'' ''critical stock allowance holder,'' and ''unexpended critical stock allowance'' from § 82.3. EPA is proposing to no longer allow for the intercompany transfer of critical stock allowances at § 82.12(a) [1] or the exchange of critical use allowances for critical stock allowances at § 82.12(e). EPA is also proposing to remove the reporting and recordkeeping requirements related to critical stock allowances in § 82.13(3) and (4). EPA invites comment on the necessity of these provisions, the appropriateness of removing them from the Code of Federal Regulations, and whether there are other provisions that should be amended in light of the removal of the requirement to use critical stock allowances for sales of inventory to critical users.

In 2013 EPA held discussions with USDA and the Department of State on tools that could potentially address immediate and unforeseen needs for methyl bromide including whether emergency situations may arise that warrant the use of methyl bromide consistent with the treaty, recognizing that emergency uses are not intended as a replacement for CUE uses. In August, EPA held a stakeholder meeting to present, among other things, the findings of those discussions and noted that the three agencies had not yet identified any specific situations that could not be addressed by current mechanisms. The U.S. government is committed to using flexibility in the Protocol's existing mechanisms as an avenue to address changes in national circumstance that affect the transition to alternatives. EPA welcomes comments on specific emergency situations that may necessitate the use of methyl bromide, consistent with the

[1] This provision allows any critical stock allowance holder (''transferror'') to transfer critical stock allowances to any critical stock allowance holder or any methyl bromide producer, importer, distributor, or third party applicator (''transferee'').

requirements of the Montreal Protocol, and which could be difficult to address using current tools and authorities.

*F. The Criteria in Decisions IX/6 and Ex. I/4*

Decision XXIV/5 and Decision XXV/4 call on Parties to apply the conditions and criteria listed in Decisions Ex. I/4 (to the extent applicable) and IX/6 paragraph 1 to exempted critical uses for the 2014 and 2015 control periods. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., and V.C. of this preamble. Section V.C. solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6 paragraph (1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.D. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6 paragraph (1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption. EPA refers readers to the preamble to the 2006 CUE rule (71 FR 5989, February 6, 2006) as well as to the memo in the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration. As explained in those documents, EPA's interpretation of this term has several dimensions, including looking at potential effects on both demand and supply for a commodity, evaluating potential losses at both an individual level and at an aggregate level, and evaluating potential losses in both relative and absolute terms.

The remaining considerations are addressed in the nomination documents including: The lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4 paragraphs 5 and 6 that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility.

Some of these criteria are evaluated in other documents as well. For example, the United States has considered the adoption of alternatives and research into methyl bromide alternatives (see Decision IX/6 paragraph (1)(b)(iii)) in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4 paragraph 3 to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide in order to conduct the research required by Decision IX/6. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As discussed in the preamble to the 2010 CUE rule (75 FR 23179, May 3, 2010), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-phaseout inventory. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

*G. Emissions Minimization*

Previous Decisions of the Parties have stated that critical users shall employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2009 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide products can be used. This approach means that methyl bromide labels require that treated sites be tarped (except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications). The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film (VIF), by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) and the National Institute for Food and Agriculture (USDA–NIFA) to promote emission reduction techniques. The federal government has invested substantial resources into developing and implementing best practices for methyl bromide use, including emission reduction practices. The Cooperative Extension System, which receives some support from USDA–NIFA provides locally appropriate and project-focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: *http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=308* and *http://www.csrees.usda.gov/fo/methylbromideicgp.cfm*.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide. EPA also encourages researchers and users who are using such techniques to inform EPA of their experiences and to provide such information with their critical use applications.

## VI. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a ''significant regulatory action'' because it was deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings. This rule

does propose to remove requirements related to the recordkeeping and reporting of critical stock allowances which would decrease the information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (see Table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

| Category | NAICS code | NAICS small business size standard in number of employees or millions of dollars) |
|---|---|---|
| Agricultural production | 1112—Vegetable and Melon farming | $0.75 million. |
| | 1113—Fruit and Nut Tree Farming. | |
| | 1114—Greenhouse, Nursery, and Floriculture Production. | |
| Storage Uses | 115114—Postharvest Crop activities (except Cotton Ginning) | $7 million. |
| | 311211—Flour Milling | 500 employees. |
| | 311212—Rice Milling | 500 employees. |
| | 493110—General Warehousing and Storage | $25.5 million. |
| | 493130—Farm Product Warehousing and Storage | $25.5 million. |
| Distributors and Applicators | 115112—Soil Preparation, Planting and Cultivating | $7 million. |
| Producers and Importers | 325320—Pesticide and Other Agricultural Chemical Manufacturing | 500 employees. |

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for the critical use exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would allow the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. 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.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. This proposed rule is expected to affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed 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). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

*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, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally 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. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the United States.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: February 14, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

**§ 82.3 [Amended]**

■ 2. Amend § 82.3 by removing the definitions for ''Critical stock allowance (CSA)'', ''Critical stock allowance (CSA) holder'' and ''Unexpended critical stock allowance (CSA)''.

■ 3. Amend § 82.8 by revising the table in paragraph (c)(1) to read as follows:

**§ 82.8 Grant of essential use allowances and critical use allowances.**

* * * * *

(c) * * *

(1) * * *

| Company | 2014 Critical use allowances for pre-plant uses * (kilograms) | 2014 Critical use allowances for post-harvest uses * (kilograms) | 2015 Critical use allowances for pre-plant uses * (kilograms) | 2015 Critical use allowances for post-harvest uses * (kilograms) |
|---|---|---|---|---|
| Great Lakes Chemical Corp. A Chemtura Company | 252,236 | 16,572 | 227,073 | 1,969 |
| Albemarle Corp | 103,725 | 6,815 | 93,378 | 810 |
| ICL–IP America | 57,321 | 3,766 | 51,602 | 447 |
| TriCal, Inc | 1,785 | 117 | 1,607 | 14 |
| *Total* | *415,067* | *27,270* | *373,660* | *3,240* |

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart for the appropriate control period.

* * * * *

■ 4. Amend § 82.12 by revising paragraph (a) and removing paragraph (e) to read as follows:

**§ 82.12 Transfers of allowances for class I controlled substances.**

(a) Inter-company transfers. (1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances. After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) (''transferor'') may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder (''transferor'') may transfer critical use allowances to any other person (''transferee'').

* * * * *

■ 5. Amend § 82.13 by:

■ a. Revising paragraphs (f)(3)(iv) and (g)(4)(vii); and

■ b. Removing and reserving paragraphs (bb)(2)(iv) and (cc)(2)(iv)

The revised text reads as follows.

**§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.**

* * * * *

(f) * * *

(3) * * *

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, critical use allowances (pre-plant), critical use allowances (post-harvest), and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

* * * * *

(g) * * *

(4) * * *

(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter and the total sum of expended and unexpended critical use allowances (pre-plant) and unexpended critical use allowances (post-harvest);

* * * * *

■ 6. Amend Subpart A by revising Appendix L to read as follows:

**Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2014 and 2015 Control Periods**

| Column A | Column B | Column C |
|---|---|---|
| Approved critical uses | Approved critical user, location of use, and control period | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation: |
| **PRE-PLANT USES** | | |
| Strawberry Fruit ..... | California growers. Control periods 2014 and 2015 ..... | Moderate to severe black root rot or crown rot.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| **POST-HARVEST USES** | | |
| Food Processing ..... | (a) Rice millers in the U.S. who are members of the USA Rice Millers Association. Control period 2014. | Moderate to severe beetle, weevil, or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion. |
| | (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. Control period 2014. | Moderate to severe beetle, moth, or cockroach infestation.<br>Presence of sensitive electronic equipment subject to corrosion. |
| | (c) Members of the North American Millers' Association in the U.S. Control period 2014. | Moderate to severe beetle infestation.<br>Presence of sensitive electronic equipment subject to corrosion. |
| Commodities ..... | California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California. Control period 2014. | Rapid fumigation required to meet a critical market window, such as during the holiday season. |
| Dry Cured Pork Products. | Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc. Control periods 2014 and 2015. | Red legged ham beetle infestation.<br>Cheese/ham skipper infestation.<br>Dermested beetle infestation.<br>Ham mite infestation. |

[FR Doc. 2014–04882 Filed 3–6–14; 8:45 am]

BILLING CODE 6560–50–P

## LEGAL SERVICES CORPORATION

## 45 CFR Part 1626

## Restrictions on Legal Assistance to Aliens

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed program letter.

**SUMMARY:** This proposed program letter serves as a companion to 45 CFR part 1626. The proposed program letter should have been published in the **Federal Register** with the further notice of proposed rulemaking (FNPRM) on February 5, 2014, 79 FR 6859. LSC seeks comments on the proposed program letter. Additional information on the request for comments is located in the **SUPPLEMENTARY INFORMATION** section.

**DATES:** Comments on the proposed program letter are due April 7, 2014.

**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 *1626rulemaking@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), *1626rulemaking@lsc.gov*

**SUPPLEMENTARY INFORMATION:** In 2003, LSC added a list of documents establishing the eligibility of aliens for legal assistance from LSC funding recipients as an appendix to part 1626. 68 FR 55540, Sept. 26, 2003. The appendix has not changed since 2003, although immigration documents and forms have changed and Congress has authorized LSC recipients to provide legal assistance to new categories of eligible aliens. LSC believes that the frequently changing nature of immigration documents and forms requires a more flexible and responsive means of informing recipients of the changes than the informal rulemaking process provides. Consequently, in a notice of proposed rulemaking published on August 21, 2013, LSC announced its intention to remove the appendix to part 1626 and publish the information contained in the appendix as a program letter. 78 FR 51696, Aug. 21, 2013. Because the initial revision of the appendix and reclassification as a program letter is a change to the regulation, it is being done pursuant to the LSC rulemaking protocol. As such, LSC is publishing the program letter in the **Federal Register** for public comment.

LSC published a FNPRM on February 5, 2014 proposing requesting comment on additional revisions to part 1626. 79 FR 6859, Feb. 5, 2014. The proposed program letter was intended to accompany the FNPRM. The comment period for this program letter will remain open for thirty days from the date of publication of the letter in the **Federal Register**. Because this document does not affect the substance of the FNPRM, the deadline for comments on the FNPRM will remain March 7, 2014.

**Draft Program Letter [#]**

**TO:** All LSC Program Directors
**FROM:** James J. Sandman, President
**DATE:** [ ], 2014
**SUBJECT:** Alien Eligibility under LSC Regulation Part 1626

LSC published a final rule revising 45 C.F.R. Part 1626, ''Restrictions on Legal Assistance to Aliens,'' on [DATE]. Revised Part 1626 was published without the Appendix. The information contained in the Appendix will be published instead as a Program Letter and an accompanying chart describing the categories of aliens eligible for legal assistance from LSC recipients and containing a non-exhaustive list of examples of acceptable documentation showing eligibility under Part 1626. These documents should be read together with Part 1626 in making eligibility determinations.

**Documentation**

The documents identified as acceptable to establish eligibility fall into one of two categories: 1) documents regarding the immigration status of an alien; or 2) documents providing evidence that the alien has experienced qualifying abuse or otherwise meets the requirements of 45 C.F.R. § 1626.4 regarding the Violence Against Women Act (VAWA) and other anti-abuse statutes.

**Special Considerations**

Victims of trafficking are covered by different provisions of 45 C.F.R. § 1626.4 depending on the nature of the trafficking activity. Recipients should determine whether an alien is a victim of trafficking under VAWA or section 101(a)(15)(U) of the Immigration and Nationality Act, or a victim of severe forms of trafficking under the Trafficking Victims Protection Act, 22 U.S.C. § 7101 et seq. The facts of an alien's situation may indicate that the alien is eligible for assistance under one or more of these statutes.

Eligibility for assistance based on qualifying for a U-visa or being a victim of severe forms of trafficking requires consideration of other statutory factors in addition to the qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U); 22 U.S.C. § 7105(b)(1)(C). Recipients must document that an alien meets all relevant statutory factors.

**Additional Resources**

If you have any questions or concerns regarding this Program Letter or for further guidance, please contact LSC General Counsel Ronald S. Flagg. Additional information regarding the documentation contained in the chart can be found at the U.S. Customs and Immigration Service Web site (*http://www.uscis.gov*) and at the Anti-Trafficking in Persons Division of the Office of Refugee Resettlement within the Department of Health and Human Services Web site (*http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking*).

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS

| Alien category | Statutory authorization | Regulatory authorization of eligibility in 45 CFR part 1626 | Verification documents |
|---|---|---|---|
| Lawful Permanent Resident. | 8 U.S.C. 1101(a)(20) | § 1626.5(a) | (1) Alien Registration Receipt Card: Form I–551 or Form I–151; *or*<br>(2) Memorandum of Creation of Record of Lawful Permanent. Residence: Form I–181 with approval stamp; *or*<br>(3) Passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; *or*<br>(4) Order granting residency or adjustment of status; *or*<br>(5) Permit to Reenter the United States: Form I–327; *or*<br>(6) Arrival/Departure Record: CBP Form I–94 with stamp indicating admission for lawful permanent residence; *or* |

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS—Continued

| Alien category | Statutory authorization | Regulatory authorization of eligibility in 45 CFR part 1626 | Verification documents |
|---|---|---|---|
| | | | (7) Any verification of lawful permanent residence in the U.S. to include any one of the following: authoritative document from the United States Immigration and Naturalization Service (INS);[1] or the Department of Homeland Security (DHS), including online or email verification. |
| Spouse of a U.S. citizen, or a parent of a U.S. citizen, or an unmarried child under 21 of U.S. citizen; *and* who has filed an application for adjustment of status to lawful permanent resident. | 8 U.S.C. §§ 1158(b)(3), 1255, 1255a, 1259. | § 1626.5(b) | (1) Proof of filing of a qualifying application for adjustment of status to permanent residency, which may include one or more of the following: a fee receipt or an online or email printout showing that the application was filed with the INS prior to 2003, U.S. Citizenship and Immigration Service (USCIS), the Department of Homeland Security (DHS), or the immigration court; *or* a filing stamp showing that the application was filed; *or* a grant of a fee waiver for such application, a biometrics appointment notice indicating such pending application, a printout from the USCIS online service, or a copy of the application accompanied by a notarized statement signed by the alien that such form was filed; *and*<br>(2) Proof of relationship to U.S. citizen, which may include one or more of the following: a copy of the person's marriage certificate accompanied by proof of the spouse's U.S. citizenship; *or* a copy of the birth certificate, baptismal certificate, adoption decree, or other document demonstrating the individual is under the age of 21, accompanied by proof that the individual's parent is a U.S. citizen; *or* a copy of Petition for Alien Relative: Form I–130, or Petition for American, Widow(er) or Special Immigrant: Form I–360 containing information demonstrating the individual is related to such U.S. citizen, accompanied by proof of filing. |
| Asylee | 8 U.S.C. § 1158 | § 1626.5(c) | (1) Arrival/Departure Record: Form I–94 or passport stamped "asylee" or "§ 208"; *or*<br>(2) Order granting asylum from INS[2], DHS, immigration judge, the Board of Immigration Appeals (BIA), or federal court; *or*<br>(3) Refugee Travel Document: Form I–571; *or*<br>(4) Employment Authorization Card: Form I–688B[3] or Employment Authorization Document: Form I–766 coded "8 CFR § 274a.12(a)(5)(asylee)" or "A5"; *or*<br>(5) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |
| Refugee | 8 U.S.C. § 1157 | § 1626.5(c) | (1) Arrival/Departure Record: Form I–94 or passport stamped "refugee" or "§ 207"; *or*<br>(2) Employment Authorization Card: Form I–688B[4] or Employment Authorization Document: Form I–766 coded "8 CFR § 274a.12(a)(3)(refugee)" or "A3" or "8 CFR § 274a.12(a)(4) (paroled refugee)" or "A4"; *or*<br>(3) Refugee Travel Document: Form I–571; *or*<br>(4) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS—Continued

| Alien category | Statutory authorization | Regulatory authorization of eligibility in 45 CFR part 1626 | Verification documents |
|---|---|---|---|
| Individual Granted Withholding of Deportation, Exclusion, or Removal. | 8 U.S.C. § 1231(b)(3) (withholding of removal); former INA section 243(h) (withholding of deportation or exclusion). | § 1626.5(e) | (1) Arrival/Departure Record: Form I–94 stamped "§ 243(h)" or "§ 241(b)(3)"; *or*<br>(2) Order granting withholding of deportation/deferral of removal from DHS, U.S. Immigration and Customs Enforcement (ICE), immigration court, BIA, or federal court; *or*<br>(3) Temporary Resident Card: Form I–688 [5] or Employment Authorization Document: Form I–766 coded "8 CFR § 274a.12(a)(10) (withholding of deportation)" or "A10"; *or*<br>(4) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online email verification. |
| Conditional Entrant | 8 U.S.C. 1153(a)(7) [6] | § 1626.5(d) | (1) Arrival/Departure Record: Form I–94 or passport stamped "conditional entrant"; *or*<br>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |
| Special Agricultural Worker Temporary Resident. | 8 U.S.C. 1160 | § 1626.10(d) | (1) Temporary Resident Card: Form I–688 [7], I–688A, Employment Authorization Card: Form I–688B [8], or Employment Authorization Document: Form I–766 indicating issuance under INA § 210 (or under 8 C.F.R. § 274a.12(a)(2) or coded "A2," with other evidence indicating eligibility under INA § 210); *or*<br>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |
| H–2A Temporary Agricultural Worker. | 8 U.S.C. § 1101(a)(15)(H) | § 1626.11(a) | (1) Arrival/Departure Record: Form I–94 or passport stamped "H–2A"; *or*<br>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |
| H–2B Temporary Non-Agricultural Worker. | 8 U.S.C. § 1101(a)(15)(H) | § 1626.11(b) | (1) Arrival/Departure Record: Form I–94 or passport stamped "H–2B" and evidence that the worker is employed in forestry; *or*<br>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification. |
| Aliens subjected to battery, extreme cruelty, sexual assault, or trafficking. | Pub. L. 104–208, Div. A, Tit. V, § 502(a)(2)(C), 110 Stat. 2009, 3009–60; Pub. L. 109–162, § 164, 119 Stat. 2960, 2978.. | § 1626.4(c)(1), (c)(2) | (1) A decision or other authoritative document from INS, DHS, USCIS, immigration judge, BIA, federal or state court finding or verifying that a person has been a victim of the qualifying abuse; *or*<br>(2) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the qualifying abuse; evidence that a person sought safe haven in a shelter or similar refuge from the qualifying abuse; photographs; documents or other evidence of a series of acts that establish a pattern of qualifying abuse; *or*<br>(3) An application for administrative or judicial relief including an assertion that the applicant has been a victim of the qualifying abuse, but only *if* such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (2). |

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS—Continued

| Alien category | Statutory authorization | Regulatory authorization of eligibility in 45 CFR part 1626 | Verification documents |
|---|---|---|---|
| Victims of severe forms of trafficking. | 22 U.S.C. § 7105(b)(1)(B) | § 1626.4(c)(3) | (1) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the severe forms of trafficking; evidence that a person sought safe haven in a shelter or similar refuge from the severe forms of trafficking; photographs; documents or other evidence of a series of acts that establish a pattern of severe forms of trafficking; *or*<br>(2) An application for administrative or judicial relief including an assertion that the applicant has been a victim of severe forms of trafficking, but only *if* such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (1); *or*<br>(3) Certification letter from the U.S. Department of Health and Human Services (HHS); *or*<br>(4) Telephonic verification of certification by calling the HHS trafficking verification line, (202) 401–5510, or (866) 401–5510. |
| Minor victims of severe forms of trafficking. | 22 U.S.C. § 7105(b)(1)(B) | § 1626.4(c)(3) | (1) Eligibility letter from HHS; *or*<br>(2) Interim Eligibility Letter from HHS; *or*<br>(3) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end severe forms of trafficking; evidence that the alien sought safe haven in a shelter or similar refuge from severe forms of trafficking; photographs; documents or other evidence of a series of acts that establish a pattern of severe forms of trafficking; *or* |
| Certain family members of victims of severe forms of trafficking (''derivative T-visa holders''). | 22 U.S.C. § 7105(b)(1)(B) | § 1626.4(c)(3) | (1) Application for Immediate Family Member of T–1 Recipient: Form I–914, Supplement A; *or*<br>(2) Notice of Action: Form I–797, visa, Arrival/Departure Form: Form I–94, or passport stamped T–2, T–3, T–4, or T–5, or T–6; *or*<br>(3) Employment Authorization Card: Form I–688B or Employment Authorization Document: Form I–766 coded ''(c)(25)''; *or*<br>(4) Documentary evidence showing that the primary applicant for immigration relief is a victim of severe forms of trafficking as described above; and credible evidence showing that the alien is a qualified family member of the primary applicant. |
| Aliens qualified for a U-visa. | Pub. L. 109–162, § 164, 119 Stat. 2960, 2978; 8 U.S.C. § 1101(a)(15)(U). | § 1626.4(c)(4) | (1) Petition for U Nonimmigrant Status: Form I–918; *or*<br>(2) Petition for Immediate Family Member of U–1 Recipient: Form I–918, Supplement A; *or*<br>(3) Notice of Action: Form I–797, visa, Arrival/Departure Record: Form I–94, or passport stamped U–1, U–2, U–3, U–4, or U–5; *or*<br>(4) Employment Authorization Card: Form I–688B or Employment Authorization Document: Form I–766 coded ''(a)(19)'' (principal) or ''(a)(20)'' (derivative); *or*<br>(5) A decision or other authoritative document from INS, DHS, USCIS, immigration judge, BIA, federal or state court finding or verifying that a person qualifies for a U-visa; *or* |

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS—Continued

| Alien category | Statutory authorization | Regulatory authorization of eligibility in 45 CFR part 1626 | Verification documents |
|---|---|---|---|
| | | | (6) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the qualifying abuse; evidence that the alien sought safe haven in a shelter or similar refuge from the qualifying abuse; photographs; documents or other evidence of a series of acts that establish a pattern of qualifying abuse; *or*<br>(7) An application for administrative or judicial relief including an assertion that the applicant qualifies for a U-visa, but only *if* such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (6); *or*<br>(8) Documentary evidence showing that the primary applicant for immigration relief qualifies for a U-visa as described above; and credible evidence showing that the alien is a qualified family member of the primary applicant. |

[1] For any immigration status document obtained prior to March 1, 2003.
[2] *Supra* note 1.
[3] Dated before April 3, 2009.
[4] *Supra* note 3.
[5] *Supra* note 3.
[6] As in effect prior to April 1, 1980.
[7] *Infra* note 3.
[8] *Infra* note 3.

Dated: March 4, 2014.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2014–05008 Filed 3–6–14; 8:45 am]

**BILLING CODE 7050–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 217

**[Docket No. 131120978–4146–01]**

**RIN 0648–BD80**

## Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Missile Launches From San Nicolas Island, California

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

**ACTION:** Proposed rule, request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy), Naval Air Warfare Center Weapons Division (NAWCWD) for authorization to take marine mammals incidental to missile launches from San Nicolas Island (SNI) from June 2014 through June 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letters of Authorization (LOAs) to the Navy to incidentally harass marine mammals.

**DATES:** Comments and information must be received no later than April 21, 2014.

**ADDRESSES:** You may submit comments, identified by 0648–BD80, by either of the following methods:

- Electronic submissions: submit all electronic public comments via the Federal eRulemaking Portal (*http://www.regulations.gov*)
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Jolie Harrison, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

An electronic copy of the Navy's application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

## Summary of Request

On July 24, 2013, NMFS received an application from the Navy for the taking of marine mammals incidental to missile launches from San Nicolas Island (SNI). NMFS determined that the application was adequate and complete on November 18, 2013.

The Navy proposes to continue a launch program for missiles and targets from several launch sites on SNI. The proposed activity would occur between June 2014 and June 2019 and may involve up to 40 launches per year. Take, by Level B Harassment only, of individuals of northern elephant seal (*Mirounga angustirostris*), Pacific harbor seal (*Phoca vitulina*), and California sea lion (*Zalophus californianus*) is anticipated to result from the specified activity.

The Navy is currently operating under an authorization to take marine mammals incidental to missile launches from SNI, which expires June 2, 2014 (74 FR 26587).

## Description of the Specified Activity

### *Overview*

The Navy plans to continue a launch program for missiles and targets from several launch sites on SNI. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles either in quick succession or at intervals of a few hours. Up to 200 missiles may be launched over the 5-year period, but the number and type of launch varies depending on operational needs.

The purpose of these launches is to support testing and training activities associated with operations on the NAWCWD Point Mugu Sea Range. The Sea Range is used by the U.S. and allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the launches are used for practicing defensive drills against the types of weapons simulated by these missiles and some launches are conducted for the related purpose of testing new types of targets.

### *Dates and Duration*

Launches of this type have been occurring at SNI for many years and are expected to continue indefinitely into the future. The Navy has requested a 5-year Letter of Authorization for missile launches taking place between June 2014 and June 2019. The timing of these launches is variable and subject to testing and training requirements and meteorological and logistical limitations. To meet the Navy's operational testing and training requirements, launches may be required at any time of year and any time of day. Up to 200 missiles (40 missiles per year) may be launched over the 5-year period and the Navy is proposing that up to 10 launches per year may occur at night. Given the launch acceleration and flight speed of the missiles, most launch events are of extremely short duration. Strong launch sounds are typically detectable near the surrounding beaches for no more than a few seconds per launch (Holst *et al.,* 2005a, 2008, 2011).

### *Specified Geographic Region*

SNI is one of the eight Channel Islands in the Southern California Bight, located about 105 kilometers (km) southwest of Point Mugu. Missile launches would occur from the western part of SNI (see Figure 2 in the Navy's LOA application). The missiles fly generally westward through the Point Mugu Sea Range. The primary launch locations are the Alpha Launch Complex, which is located on the west-central part of SNI, and Building 807 Launch Complex, which is located at the western end of SNI. Other launch pads are located nearby.

### *Detailed Description of Activities*

Missiles included in the Navy's request range from relatively small and quieter missiles like the Rolling Airframe Missile to larger and louder missiles like the Terrier Black-Brant. While other missiles may be launched in the future, the largest missile analyzed here is 23,000 kilograms (kg). The following is a description of the types of missiles that may be launched at SNI during the 5-year period.

*Rolling Airframe Missile (RAM)*—The Navy/Raytheon RAM is a supersonic, lightweight, quick-reaction missile. This relatively small missile uses the infrared seeker of the Stinger missile and the warhead, rocket motor, and fuse from the Sidewinder missile. It has a high-tech radio-to-infrared frequency guiding system. The RAM is a solid-propellant rocket 12.7 centimeters (cm) in diameter and 2.8 m long. Its launch weight is 73.5 kg, and operational versions have warheads that weigh 11.4 kg.

At SNI, RAMs are launched from the Building 807 Launch Complex, near the shoreline. Previous RAM launches have resulted in flat-weighted sound pressure levels up to 126 decibels (dB) near the launcher and 99 dB at a nearshore site located 1.6 km from the three-dimensional closest point of approach. Flat-weighted sound exposure level ranged from 84 to 97 dB reference 20 micropascals (20 μPa), and M-weighted sound exposure levels for pinnipeds in air ranged from 76 to 96 dB reference 20 micropascals squared per second (20 $\mu Pa^2 s$). Peak pressure ranged from 104 to 117 dB re 20 μPa. The reference sound pressure (20 μPa) used here and throughout the document is standard for airborne sounds.

*GQM–163A ''Coyote''*—The Coyote, designated GQM–163A, is an expendable SSST powered by a ducted-rocket ramjet. It has replaced the Vandal, which was used as the primary missile during launches from 2001 to 2005, and is similar in size and performance. The Coyote is capable of flying at low altitudes (4 m cruise altitude) and supersonic speeds (Mach 2.5) over a flight range of 83 km. This

missile is designed to provide a ground launched aerial target system to simulate a supersonic, sea-skimming Anti-Ship Cruise missile threat. The SSST assembly consists of two primary subsystems: Mk 70 solid propellant booster and the GQM–163A target missile. The solid-rocket booster is about 46 centimeters (cm) in diameter and is of the type used to launch the Navy's ''Standard'' surface-to-air missile. The GQM–163A target missile is 5.5 m long and 36 cm in diameter, exclusive of its air intakes. It consists of a solid fuel Ducted Rocket (DR) ramjet subsystem, Control and Fairing Subassemblies, and the Front End Subsystem, which includes an explosive destruct system to terminate flight if required.

The Coyote uses the Vandal launcher, currently installed at the Alpha Launch Complex on SNI. Previous Coyote launches produced flat-weighted sound pressure levels ranging from 126 to 134 dB re μPa²s at distances of 0.8 to 1.7 km from the closest point of approach of the vehicle, and 82 to 93 dB at distances of 2.4 to 3.2 km. Flat-weighted sound exposure levels ranged from 87 to 119 dB re 20 μPa²s. M-weighted sound exposure levels ranged from 60 to 114 dB re20 μPa²s, and peak pressures ranged from 100 to 144 dB 20 μPa.

*Multi-stage Sea Skimming Target (MSST)*—The MSST is a subsonic cruise missile with a supersonic terminal stage that approaches its target at low-level at Mach 2.8. The MSST is expected to replace the Coyote as the primary target missile launched from SNI in the future. It consists of a subsonic winged ''cruise bus,'' which releases a supersonic ''sprint vehicle'' for terminal approach. The sprint vehicle is based on the Coyote target missile.

The MSST is launched from the Alpha Launch Complex on SNI. Previous MSST launches had flat-weighted sound pressure levels of 78.7 to 96.6 dB re 20 μPa and M-weighted sound exposure levels of 62.3 to 83.3 re 20 μPa²s at sites 1.3 to 2.7 km from the closest point of approach.

*Terrier (Black Brant, Lynx, Orion)*—The Terrier class missiles consist of the Terrier Mark 70 booster with a variety of second stage rockets (e.g., Terrier-Black Brant). The solid-rocket booster is about 46 cm in diameter, 394 cm long, and weighs 1,038 kg. The three most likely Terrier class missiles that would be launched include the Terrier-Black Brant, Terrier-Lynx, and Terrier-Orion. The Black Brant has a diameter of 44 cm, is 533 cm long, and weighs 1,265 kg. This missile reaches an altitude of 203 km and has a range of 264 km. Terrier burnout occurs after 6.2 seconds at an altitude of 3 km, and Black Brant burnout occurs after 44.5 seconds at an altitude of 37.7 km. The Lynx is 36 cm in diameter and 279 cm long. This missile reaches an altitude of 84 km and has a range of 99 km. Lynx burnout occurs after 58.5 seconds at 43.5 km. The Improved Orion motor is 36 cm in diameter and 280 cm long. On SNI, this class of missile target is typically launched vertically or near-vertically from the Building 807 Launch Complex. Since these missiles use the same Terrier MK 70 booster as the Coyote, launch sound levels are generally similar to those from the Coyote. Given the near-vertical launch elevation, sounds in the immediate vicinity may be prolonged, though the missile reaches high altitude very quickly after launch.

A Terrier-Orion produced a flat-weighted sound pressure level of 91 dB re 20 μPa, a flat-weighted sound exposure level of 96 dB 20 μPa²s, and an M-weighted sound exposure level of 92 dB re 20 μPa²s at a distance of 2.4 km from the closest point of approach. The peak pressure was 104 dB 20 μPa. During previous Terrier-Black Brant launches, the flat-weighted sound pressure level ranged from 102.7 to 115 dB, and M-weighted sound exposure level ranged from 106.5 to 118.4 dB at pinniped haul-out sites located at 0.6 to 1.3 km from the closest point of approach. Sounds near the launcher reached 134 dB flat-weighted sound pressure level and 132.3 dB 20 μPa²s M-weighted sound exposure level. During previous Terrier-Lynx launches, flat-weighted sound pressure level measured 85.9 to 114.4 dB re 20 μPa at sites located 0.6 to 5.1 km from the closest point of approach of the launched vehicle and M-weighted sound exposure levels ranged from 90.5 to 118 dB re 20 μPa.

*RIM–161 Standard Missile 3 (SM–3)*—The SM–3 is a ship-based missile system used to intercept short- to intermediate-range ballistic missiles as a part of Aegis Ballistic Missile Defense System. Although primarily designed as an anti-ballistic missile defensive weapon, the SM–3 has also been employed in an anti-satellite capacity against a satellite at the lower end of low Earth orbit. The SM–3 evolved from the proven SM–2 Block IV design. The SM–3 uses the same booster and dual thrust rocket motor as the Block IV missile for the first and second stages and the same steering control section and midcourse missile guidance for maneuvering in the atmosphere. To support the extended range of an exo-atmospheric intercept, additional missile thrust is provided in a new third stage for the SM–3 missile, containing a dual pulse rocket motor for the early exo-atmospheric phase of flight. Testing of SM–3 missiles may begin during this proposed authorization period and launch sounds are expected to be within the range of existing missiles.

*Other Missile Launches*—The Navy may also launch other missiles to simulate various types of threat missiles and aircraft, and to test other systems. For example, in 2002, a Tactical Tomahawk was launched from Building 807 Launch Complex. The Tomahawk produced a flat-weighted sound pressure level of 93 dB re 20 μPa, a flat-weighted sound exposure level of 107 dB re 20 μPa²s, and an M-weighted sound exposure level of 105 dB re 20 μPa²s at a distance of 539 m from the closest point of approach. The peak pressure was 111 dB 20 μPa. A Falcon was launched from the Alpha Launch Complex in 2006, producing a flat-weighted sound pressure level of 84 dB re 20 μPa, a flat-weighted sound exposure level of 88 dB 20 μPa²s, and an M-weighted sound exposure level of 82 dB re 20 μPa²s at a beach located north of the launch azimuth. Near the launcher, the flat-weighted sound pressure level was 128 dB re 20 μPa, the flat-weighted sound exposure level was 126 dB 20 μPa²s, and the M-weighted sound exposure level was 125 dB re 20 μPa²s.

Missiles of the BQM–34 or BQM–74 type could also be launched. These are small, unmanned aircraft that are launched using jet-assisted take-off rocket bottles and then continue offshore powered by small turbojet engines. The larger of these, the BQM–34, is 7 m long and has a mass of 1,134 kg plus the jet-assisted take-off rocket bottle. The smaller BQM–74 is up to 420 cm long and has a mass of 250 kg plus the solid propellant jet-assisted take-off rocket bottles. Burgess and Greene (1998) reported that A-weighted sound pressure levels ranged from 92 dBA re 20 μPa at a closest point of approach distance of 370 m, to 145 dB at 15 m for a launch in 1997. If launches of other missile types occur, they would be included within the total of 40 launches anticipated per year.

*General Launch Operations*—Aircraft and helicopter flights between the Point Mugu airfield on the mainland, the airfield on SNI, and the target sites in the Sea Range are a routine part of a planned launch operation. These flights generally do not pass at low level over the beaches where pinnipeds are expected to be hauled out. Therefore, these flights are not further considered in this document.

Movements of personnel are restricted near the launch sites at least several hours prior to a launch for safety reasons. No personnel are allowed on the western end of SNI during launches. Movements of personnel or missiles near the island's beaches are also restricted at other times of the year for purposes of environmental protection and preservation of cultural resource sites. Launch monitoring equipment would be deployed and activated prior to the launches.

**Description of Marine Mammals in the Area of the Specified Activity**

There are seven species of marine mammals with possible or confirmed occurrence in the area of the specified activity: Northern elephant seals, harbor seals, California sea lion, northern fur seals (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), Steller sea lion (*Eumetopias jubatus*), and southern sea otter (*Enhydra lutris nereis*). The northern fur seal is considered depleted under the MMPA; the Guadalupe fur seal is listed as threatened under the Endangered Species Act (ESA) and depleted under the MMPA; and the eastern distinct population segment of Steller sea lion was delisted from the ESA in 2013. The northern fur seal, Guadalupe fur seal, and Steller sea lion are considered rare at SNI and takes of these species have not been observed under the Navy's current MMPA authorization. Therefore, these three species will not be considered further. The southern sea otter is managed by the U.S. Fish and Wildlife Service and is also not considered further in this proposed rule notice. Table 1 includes species-specific information on the three species likely to occur in the area of the specified activity.

TABLE 1—SPECIES INFORMATION ON THE MARINE MAMMALS LIKELY TO OCCUR IN THE AREA OF THE SPECIFIED ACTIVITY

| Common name | Scientific name | Status | Occurrence | Seasonality | Range | Abundance |
|---|---|---|---|---|---|---|
| Northern elephant sea | *Mirounga angustirostris* | | Common | Year-round | Mexico to Alaska | 124,000 |
| Harbor seal | *Phoca vitulina* | | Common | Year-round | Baja California to Aleutian Islands. | 30,196 |
| California sea lion | *Zalophus californianus* | | Common | Year-round | Mexico to Canada | 296,750 |

Further information on the biology and local distribution of these species can be found in the Navy's application (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/.*

**Potential Effects of the Specified Activity on Marine Mammals**

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., missile launch noise) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Potential effects of the specified activity on marine mammals involve both acoustic and non-acoustic effects. Acoustic effects are related to sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Potential non-acoustic effects could result from the physical presence of personnel during placement of video and acoustical monitoring equipment. However, careful deployment of monitoring equipment is not expected to result in any disturbance to pinnipeds hauled out nearby. Any visual disturbance caused by passage of a vehicle overhead is likely to be minor and brief as the launch vehicles are relatively small and move at great speed.

*Acoustic Impacts*

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.,* 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well-being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as stampedes into the sea from terrestrial haul-out sites;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If marine mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or

permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, three marine mammal species (pinnipeds only) are likely to occur in the proposed action area. A species functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

*Behavioral Reactions of Pinnipeds to Missile Launches*

Acoustic impacts of the specified activity could result from sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Noises with sudden onset or high amplitude relative to the ambient noise level may elicit a behavioral response from pinnipeds resting on shore. Some pinnipeds tolerate high sound levels without reacting strongly, whereas others may react strongly when sound levels are lower. Published papers and available technical reports describing behavioral responses of pinnipeds to the types of sound recorded near haul-out sites on SNI indicate that there is much variability in the responses. Responses can range from momentary startle reactions to animals fleeing into the water or otherwise away from their resting sites in what has been termed a stampede. Studies of pinnipeds during missile launch events have demonstrated that different pinniped species, and even different individuals in the same haul-out group, can exhibit a range of responses from alert to stampede. It is this variation that makes setting reaction criteria difficult. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a looming visual stimulus (Hayes and Saif, 1967), which can be especially effective in eliciting flight or other responses (Berrens *et al.,* 1988). Missile launches are unlike many other forms of disturbance because of their sudden sound onsets, high peak levels in some cases, and short durations (Cummings, 1993).

Previous to the start of monitoring work at SNI under an Incidental Harassment Authorization issued in 2001, most existing data on reactions of hauled-out pinnipeds to sonic booms or launch noise involved far larger launch missiles than the Coyotes and other missiles that would be launched from SNI. In most cases, where the species of pinnipeds occurring in the Sea Range have been exposed to the sounds of large missile launches (such as the Titan IV from Vandenberg Air Force Base), animals did not flush into the sea unless the sound level to which they were exposed was relatively high. The reactions of harbor seals to even these large missile launches have been limited to short-term (5–30 minute) abandonment of haul-out sites.

Holst *et al.* (2005, 2008, 2010, and 2011) summarize the systematic monitoring results from SNI from mid-2001 through February 2011. Ugoretz and Green (2012) summarize results from 2011 through 2012. In particular, northern elephant seals seem very tolerant of acoustic disturbances (Stewart 1981; Holst *et al.,* 2008) and were removed from the list of target species for monitoring on SNI in 2010. In contrast, harbor seals are more easily disturbed. Based on SNI launch monitoring results from 2001 to 2007, most pinnipeds—especially northern elephant seals—would be expected to exhibit no more than short-term alter or startle responses (Holst *et al.,* 2005, 2008, 2011). Any localized displacement would be of short duration, although some harbor seals may leave their haul-out site until the following low tide. However, Holst and Lawson (2002) noted that numbers occupying haul-out sites on the next day were similar to pre-launch numbers.

The most common type of reaction to missile launches at SNI is expected to be a momentary ''alert'' response. When the animals hear or otherwise detect the launch, they are likely to become alert, and (at least momentarily) to interrupt prior activities in order to pay attention to the launch. Animals that are well to the side of the launch trajectory are likely to not show any additional reaction. Animals that are closer to the trajectory may show a momentary alert response, or they may react more strongly. Previous observations indicate that elephant seals, in particular, will rarely if ever show more than a momentary alert reaction (Stewart, 1981; Stewart *et al.,* 1994; Holst *et al.,* 2005, 2008)—even when exposed to noise levels or types that caused nearby harbor seals and California sea lions to flee.

Video recordings of pinnipeds around the periphery of western SNI during launches on SNI in 2001–2012 have shown that some pinnipeds react to a nearby launch by moving into the water or along the shoreline (Holst *et al.,* 2005, 2008, 2010, 2011; Ugoretz and Greene, 2012). Pinniped behavioral responses to launch sounds were usually brief and of low magnitude, especially for northern elephant seals. California sea lions (especially the young animals) exhibited more reaction than elephant seals, and harbor seals were the most responsive of the three species.

Northern elephant seals exhibited little reaction to launch sounds (Holst *et al.,* 2005, 2008, 2010, 2011). Most individuals merely raised their heads briefly upon hearing the launch sounds and then quickly returned to their previous activity pattern (usually sleeping). During some launches, a small proportion of northern elephant seals moved a short distance on the beach, away from their resting site, but

settled within minutes. Because of this, elephant seals are no longer targeted for monitoring during launches, but are often in the field of view when monitoring other species.

As expected, responses of California sea lions to the launches varied by individual and age group (Holst *et al.,* 2005, 2008, 2010, 2011). Some sea lions exhibited brief startle responses and increased vigilance for a short period after each launch. Other sea lions, particularly pups that were previously playing in groups along the margin of the haul-out beaches, appeared to react more vigorously. A greater proportion of hauled-out sea lions typically responded and/or entered the water when launch sounds were louder (Holst *et al.,* 2005, 2008, 2010, 2011; Ugoretz and Greene, 2012). Adult sea lions already hauled out would mill about on the beach for a short period before settling, whereas those in the shallow water near the beach did not come ashore.

During the majority of launches at SNI, most harbor seals within the audible range of the launch left their haul-out sites on rocky ledges to enter the water and did not return during the duration of the video-recording period (which sometimes extended up to several hours after the launch) (Holst *et al.,* 2005, 2008, 2010, 2011; Ugoretz and Greene, 2012). During monitoring the day after a launch, harbor seals were usually hauled out again at these sites (Holst and Lawson, 2002).

The type of missile being launched is also important in determining the nature and extent of pinniped reactions to launch sounds. Holst *et al.* (2008) showed that significantly more California sea lions responded during Coyote launches than during other missile launches; AGS launches caused the fewest reactions. Elephant seals showed significantly less reaction during launches involving missiles other than Vandals. The BQM–34 and especially the BQM–74 subsonic drone missiles that may be launched from SNI are smaller and less noisy than Coyotes. Launches of BQM–34 drones from NAS Point Mugu have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon about 3.2 kilometers (km) to the side of the launch track (Lawson *et al.,* 1998).

*Stampede-Related Injury or Mortality From Missile Launches*

Bowles and Stewart (1980) reported that harbor seals on San Miguel Island reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible. These harbor seals flushed into the water in response to some sonic booms and to a few of the overflights by light aircraft, jets above 244 meters (m) and helicopters below 305 m. Sometimes the harbor seals did not return to land until the next day, although they more commonly returned the same day. These authors postulated that such disturbance-induced stampedes or other mother-pup separations could be a source of increased mortality. However, observations during actual sonic booms and tests with a carbide cannon simulating sonic booms at San Miguel and SNI provide no evidence of such pinniped injury or mortality (Stewart, 1982) and no mortality has been observed during missile launches (Holst *et al.,* 2005, 2008, 2010, 2011; Ugoretz and Greene, 2012).

It is possible, although unlikely, that launch-induced stampedes could have adverse impacts on individual pinnipeds on the west end of SNI. However, during missile launches in 2001–2012, there was no evidence of launch-related injuries or deaths (Holst et al., 2005, 2008, 2010, 2012; Ugoretz and Greene, 2012). On several occasions, harbor seals and California sea lion adults moved over pups as the animals moved in response to the launches, but the pups did not appear to be injured. Given the large numbers of pinnipeds giving birth on SNI, it is expected that injuries and deaths will occur as a result of natural causes. For example, during the 1997–1998 El Niño event, pup mortality reached almost 90 percent for northern fur seals at nearby San Miguel Island, and some adults may have died as well (Melin *et al.,* 2005). Pup mortality also increased during this period for California sea lions. Indirect evidence that launches have not caused mortality comes from the fact that populations of northern elephant seals and especially California sea lions on SNI are growing rapidly despite similar launches for many years. Harbor seal numbers have also increased and new harbor seal haul-out sites have been established at locations directly under and near the launch tracks of missiles.

**Anticipated Effects on Marine Mammal Habitat**

During the period of the proposed activity, three species of pinnipeds will use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand, rock ledges, and rocky cobble. Pinnipeds continue to use beaches around the western end of SNI, and are expanding their use of some beaches, despite ongoing launch activities for many years. Similarly, it appears that sounds from prior launches have not affected use of coastal areas at Vandenberg Air Force Base where similar missile launches occur.

Pinnipeds do not feed when hauled out on these beaches and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, it is not expected that the launch activities will have any impact on the food or feeding success of these pinnipeds.

Boosters from missiles may be jettisoned shortly after launch and fall on the island, but are not expected to impact beaches. Fuel contained in these boosters is consumed rapidly and completely, so there would be no risk of contamination even in the very unlikely event that a booster did land on a beach. Thus, the proposed activity is not expected to have any effects on marine mammal habitat.

**Proposed Mitigation**

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact of the effectiveness of the ''military readiness activity.'' The activities described in the Navy's application are considered military readiness activities.

As during launches conducted under previous regulations, where practicable, the Navy proposes the following mitigation measures, provided that doing so will not compromise operational safety, human safety, national security, or other requirements or mission goals:

(1) Limit activities near the beaches in advance of launches;

(2) Avoid launch activities during harbor seal pupping season (February through April);

(3) Limit launch activities during other pinniped pupping seasons;

(4) Not launch missiles from the Alpha Complex at low elevation (less than 305 m) on launch azimuths that pass close to pinniped haul-out sites when occupied;

(5) Avoid launching multiple missiles in quick succession over haul-out sites, especially when young pups are present; and

(6) Aircraft and helicopter flight paths during missile launch operations would maintain a minimum altitude of 305 m from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 305 m.

**Mitigation Conclusions**

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of noise, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

**Proposed Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. The Navy submitted a marine mammal monitoring plan as part of their application. It can be found in section 13 of their application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of noise that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information).

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information).

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli.

4. An increased knowledge of the affected species.

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

*Proposed Monitoring Measures*

The Navy proposes to conduct the following monitoring measures, which are further detailed in section 13 of their application:

- The Navy would continue a standard, ongoing, land-based monitoring program to assess effects on harbor seals, northern elephant seals, and California sea lions on SNI. This monitoring would occur at up to three sites at different distances from the launch site before, during, and after each launch, depending upon presence of pinnipeds during each launch. The monitoring would be via autonomous video or Forward Looking Infrared (FLIR) cameras. Pinniped behavior on the beach would be documented prior to the planned launch operations, during the launch, and following the launch. Northern elephant seals would not be specifically targeted for monitoring, though may be present in the field of view when monitoring other species.

• During each launch, the Navy would obtain calibrated recordings of the sounds of the launches as received at different distances from the missile's flightline. The Navy anticipates that acoustic data would be acquired at each video monitoring location, to estimate sounds received by pinnipeds, and at the launch site to estimate maximum potential sound received. These recordings would provide for a thorough description of launch sounds as received at different locations on western SNI, and of the factors that affect received sound levels. By analysis of the paired data on behavioral observations and received sound levels, the Navy would further characterize the relationship between the two. If there is a clear correlation, the Navy would determine the ''dose-response'' relationship.

*Visual Monitoring*—The Navy proposes to conduct marine mammal and acoustic monitoring during launches from SNI, using simultaneous video recording of pinniped behavior and audio recording of launch sounds. The land-based monitoring would provide data required to characterize the extent and nature of the takes. In particular, the monitoring would provide the information needed to document the occurrence, nature, frequency, and duration of any changes in pinniped behavior that might result from missile launches. Components of this documentation would include the following:

• Identify and document any change in behavior or movements that may occur at the time of the launch;

• Compare received levels of launch sound with pinniped responses, based on acoustic and behavioral data from up to three monitoring sites at different distances from the launch site and missile path during each launch and attempt to establish the dose-response relationship for launch sounds under different launch conditions;

• Ascertain periods or launch conditions when pinnipeds are most and least responsive to launch activities; and

• Document take by harassment and, although unlikely, any mortality or injury.

The launch monitoring program would include remote video recordings before, during, and after launches when pinnipeds are present in the area of potential impact, and visual assessment by trained observers before and after the launch. Remote cameras are essential during launches because safety rules prevent personnel from being present in most of the areas of interest. In addition, video techniques would allow simultaneous observations at up to three different locations, and would provide a permanent record that could be reviewed in detail. No specific effort would be made to monitor elephant seals, though they may be present in mixed groups when monitoring other species.

*Acoustical Monitoring*—The Navy would take acoustical recordings during each monitored launch. These recordings would be suitable for quantitative analysis of the levels and characteristics of the received launch sounds. The Navy would use up to four autonomous audio recorders to make acoustical measurements. During each launch, these would be located as close as practical to monitored pinniped haul-out sites and near the launch pad itself. The monitored haul-out sites would typically include one site as close as possible to the missile's planned flight path and one or two locations farther from the flight path within the area of potential impact with pinnipeds present.

*Reporting Measures*

The Navy would submit annual interim technical reports to NMFS no later than December 31 for the duration of the regulations. These reports would provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during each calendar year. However, only preliminary information would be included for any launches during the 60-day period immediately preceding submission.

The Navy would submit a draft comprehensive technical report to NMFS 180 days prior to the expiration of the regulations, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date. A revised final comprehensive technical report, including all monitoring results during the entire period of the regulations would be due 90 days after the regulations expire.

The Navy would ensure that NMFS is notified immediately if an injured or dead marine mammal is judged to result from launch activities at any time.

*Monitoring Results From Previously Authorized Activities*

Between 2001 and 2012, a maximum of 1,990 California sea lions, 395 harbor seals, and 130 northern elephant seals were estimated to have been potentially harassed in any single monitoring year incidental to missile launches at SNI (Holst *et al.,* 2008, 2010, 2011; Ugoretz and Greene, 2012). These numbers may represent multiple exposures of single animals, as beaches were monitored repeatedly over the course of the year during numerous launches. However, some animals that displayed behavioral reactions may have been missed, as not all areas can be monitored during the launches. Pinnipeds that were potentially affected left the haul-out site in response to the launch, left the water at a vigorous pace, or exhibited prolonged movement or behavioral changes relative to their behavior immediately prior to the launch.

**Estimated Take by Incidental Harassment**

The NDAA of 2004 (Pub. L. 103–136) removed the ''small numbers'' and specified ''geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Any takes of marine mammals are most likely to result from operational noise as launch missiles pass near haul-out sites, and/or associated visual cues. This section estimates maximum potential take and the likely annual take of marine mammal species during the proposed missile launch program at SNI.

The launch sounds could be received for several seconds and, to be conservative, are considered to be prolonged rather than transient sounds. Given the variety of responses documented previously for the sounds of man-made activities lasting several seconds, a sound exposure level of 100 dB re 20 microPascals $^2$ per second is considered appropriate as a disturbance criterion for pinnipeds hauled out at the west end of SNI, particularly for California sea lions and northern elephant seals. Some pinnipeds that haul-out on the western end of SNI are expected to be within the area where sound exposure levels exceed 100 dB. Far fewer pinnipeds are expected to occur within this area and none of the recorded sound exposure levels appear to be high enough to induce TTS.

Based on the reaction criterion, the distance to which it is assumed to

extend, and the estimated numbers of pinnipeds exposed to sound exposure levels at or above 100 dB, the Navy estimated the number of pinnipeds on the west end of SNI that might be taken. The Navy made an additional adjustment for harbor seals, as they are known to sometimes react strongly to sound exposure levels below 100 dB. The Navy considered the percentage of animals that actually responded to launch noise in previous monitoring years in order to estimate the number of animals potentially harassed. Recorded sound exposure levels in different areas of SNI were compared to ground-based census data of pinnipeds. These censuses were typically conducted seasonally when maximum numbers of pinnipeds were known to occur on land.

*Northern Elephant Seal*

To estimate the potential maximum numbers of northern elephant seals that might be exposed to sound levels at or above 100 dB in 2014, the highest pup counts within map areas K, L, and M (see Figure 16 of the Navy's application) in any year between 2000 and 2010 were used (yielding a total of 1,854), and a continuing growth rate of 7.3 percent since 2010 was applied. This results in a maximum potential pup count of 2,458 for those map areas in 2014. Based on data collected from 1988 to 2010, the total count of all age classes expected to be hauled out is approximately twice the number of pups hauled out. Therefore, the maximum number hauled out in areas of potential impact for 2014 was approximated by doubling the maximum potential calculated pup count. Thus, the maximum expected number of elephant seals that may be exposed to sound levels at or above 100 dB during 2014 is estimated to be 4,916.

In the absence of any contrary data, it is assumed that elephant seals exhibit high site fidelity when they return to shore, and that the 4,916 elephant seals calculated above represent the maximum total number that might be exposed to ''strong'' (at or above 100 dB) sounds during the year, assuming missiles are launched when all animals are hauled out and all beaches within the area receive strong sounds. If some seals haul out on different beaches at various times during the year, sometimes within and sometimes outside the area exposed to levels at or above 100 dB, then the number of times an individual elephant seal might be exposed to strong launch sounds would be reduced. However, the total number of individuals that would be exposed at least once over the course of the year would probably be increased. Movements from one beach to another may be more likely for juveniles than for older seals, given that this has been observed in other pinniped species (such as for harbor seal pups; Thompson *et al.* 1994).

Published studies and results from the 2001–2012 monitoring at SNI indicate that elephant seals are more tolerant of transient noise and other forms of disturbance than are California sea lions or harbor seals. If so, the actual impact zone is smaller than assumed here, and the number of elephant seals that might be taken by harassment would be substantially lower than the number of seals present within the area where sound levels are at or above 100 dB. For example, during the 2001–2012 launch program, the majority of northern elephant seals did not exhibit more than brief startle reactions in response to launches (Holst *et al.* 2005, 2008, 2010, 2011; Ugoretz and Greene, 2012). Most individuals merely raised their heads briefly upon hearing the launch sounds and then quickly returned to their previous activity pattern (usually sleeping). During some launches, a small proportion (typically much less than 10 percent) of northern elephant seals moved a short distance (<10 m) away from their resting site, but settled within minutes. Elephant seals rarely moved or reacted more than this.

Therefore, the Navy estimates that up to 10 percent of 4,916 elephant seals (or 492 seals) might be taken by Level B harassment during each year of planned launch operations.

*Harbor Seals*

To determine the potential numbers of harbor seals that might be taken by harassment, the Navy used the maximum total harbor seal count for SNI (858) and assumed that the population has remained relatively stable. Previous monitoring from 2001–2012 showed that most monitored harbor seals entered the water in response to launches. Previous monitoring also indicates that about 70 percent of harbor seals that haul out on SNI use the beaches within areas K, L, and M. The Navy conservatively estimates that 80 percent of harbor seals on SNI may be impacted by missile launches. Therefore, the Navy estimates that a maximum of 686 harbor seals might be taken by Level B harassment during a 1-year period.

*California Sea Lion*

To estimate the maximum potential number of sea lions that might be hauled out within areas exposed to sound levels at or above 100 dB, the Navy calculated the maximum number of sea lions occurring within map areas K, L, and M (Figure 16 of the Navy's application) in any year from 2001–2011. The Navy adjusted this maximum, 14,963 sea lions, for a population growth rate of 5.6 percent per year, which results in a maximum of 20,749 sea lions of all ages and sexes that might be hauled out within the areas exposed to sound levels at or above 100 dB in a single year. For most of the year, only females and pups are expected to be ashore, so the number of animals exposed to these sound levels from any one launch is likely less than the estimated total number.

Based on past monitoring, approximately 10 percent of the California sea lions exposed to launch sounds during each year of launch activity might exhibit behavioral disturbance. Therefore, the Navy estimates that a maximum of 2,740 California sea lions on SNI might be taken by Level B harassment during a 1-year period.

*Summary*

NMFS proposes to authorize take according to the Navy's estimates. The estimated take numbers are provided in Table 2 below for each marine mammal species. These take estimates do not take mitigation measures into consideration.

TABLE 2—ESTIMATED AND PROPOSED TAKE OF MARINE MAMMALS ON AN ANNUAL BASIS

| Common species name | Estimated take by level B harassment | Abundance of stock | Percentage of stock potentially affected (percent) | Population trend |
|---|---|---|---|---|
| Northern elephant seal | 492 | 124,000 | <1 | unknown. |
| Harbor seal | 686 | 30,196 | 2.3 | stable. |

TABLE 2—ESTIMATED AND PROPOSED TAKE OF MARINE MAMMALS ON AN ANNUAL BASIS—Continued

| Common species name | Estimated take by level B harassment | Abundance of stock | Percentage of stock potentially affected (percent) | Population trend |
|---|---|---|---|---|
| California sea lion | 2,740 | 296,750 | <1 | increasing. |

**Analysis and Preliminary Determinations**

*Negligible Impact*

Negligible impact is ''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). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

NMFS has preliminarily determined that target and missile launch activities and aircraft and helicopter operations from SNI, as described in this document and in the Navy's application, will result in no more than Level B harassment of northern elephant seals, harbor seals, and California sea lions. The effects of these military readiness activities will be limited to short-term, localized changes in behavior, including temporarily vacating haul-outs, and possible temporary threshold shift in the hearing of any pinnipeds that are in close proximity to a launch pad at the time of a launch. These effects are not likely to have a significant or long-term impact on feeding, breeding, or other important biological functions. No take by injury or mortality is anticipated, and the potential for permanent hearing impairment is unlikely. Harassment takes will be at the lowest level practicable due to incorporation of the proposed mitigation measures mentioned previously in this document. NMFS has proposed regulations for the specified activity that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the Navy's missile launches will have a negligible impact on the affected marine mammal species or stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have any unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

**National Environmental Policy Act (NEPA)**

In May 2009, NMFS prepared an Environmental Assessment on the Navy's missile launches at SNI. NMFS is currently updating this analysis, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of an authorization.

**Request for Public Comments**

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed Rulemaking for the Navy's missile launch activities at SNI. Please include with your comments any supporting data or literature citations to help inform our final decision on the Navy's request for an MMPA authorization.

**Classification**

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not any small entities, NMFS concludes that the action would not result in a significant economic impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 217**

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: February 25, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR Part 217 is proposed to be amended as follows:

## PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Subpart F is added to part 217 to read as follows:

### Subpart F—Taking of Marine Mammals Incidental to Target and Missile Launch Activities From San Nicolas Island, CA

Sec.

217.50 Specified activity and specified geographical region.
217.51 Effective dates.
217.52 Permissible methods of taking.
217.53 Prohibitions.
217.54 Mitigation.
217.55 Requirements for monitoring and reporting.
217.56 Applications for Letters of Authorization.
217.57 Letters of Authorization.
217.58 Renewal of Letters of Authorization.
217.59 Modifications to Letters of Authorization.

## Subpart F—Taking of Marine Mammals Incidental to Target and Missile Launch Activities From San Nicolas Island, CA

### § 217.50 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in target missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

### § 217.51 Effective dates.

(a) Regulations in this subpart become effective upon issuance of the final rule.

(b) [Reserved].

### § 217.52 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 and 217.57 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.50, provided the activity is in compliance with all terms, conditions, and requirements of the regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 217.50 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals is authorized for the species listed in § 217.50(b) and is limited to Level B Harassment.

### § 217.53 Prohibitions.

Notwithstanding takings contemplated in § 217.50 and authorized by a Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter, no person in connection with the activities described in § 217.50 may:

(a) Take any marine mammal not specified in § 217.50(b);

(b) Take any marine mammal specified in § 217. 50(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 217.50(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter.

### § 217.54 Mitigation.

(a) When conducting operations identified in § 217.50(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.57 must be implemented. These mitigation measures include, but are not limited to:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid, whenever possible, launch activities during harbor seal pupping season (February to April), unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit, whenever possible, launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must not launch vehicles from the Alpha Complex at low elevation (less than 1,000 feet (305 m)) on launch azimuths that pass close to pinniped haul-out sites when occupied.

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours, except when required by the test objectives.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m).

(8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(9) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

### § 217.55 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 217.57 of this chapter for activities described in § 217.50 are required to cooperate with NMFS, and any other federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of

Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 217.50 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.50(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8401), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562–980–3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by NMFS, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.*

(i) Prior to each missile launch, an observer(s) will place three autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for no less than 1 hour immediately following the launch of Coyote and similar types of target missiles.

(iii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to launch, during launch, and for no less than 1 hour after the launch of the BQM–34, BQM–74, Tomahawk, RAM target and similar types of missiles.

(iv) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.*

(i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from three different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to NMFS, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed upon in writing.

(2) The Navy shall submit an annual report describing their activities and including the following information:

(i) Timing, number, and nature of launch operations;

(ii) Summary of mitigation and monitoring implementation;

(iii) Summary of pinniped behavioral observations; and

(iv) Estimate of the amount and nature of all takes by harassment or by other means.

(3) The Navy shall submit a draft comprehensive technical report to the Office of Protected Resources and Southwest Regional Office, NMFS, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the regulations.

(4) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60-day and final reports will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final comprehensive technical report prior to acceptance by NMFS.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the NMFS may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

**§ 217.56 Applications for Letters of Authorization**

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.06 of this chapter) conducting the activity identified in § 217.50 (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 217.57 or a renewal under § 217.58.

**§ 217.57 Letters of Authorization.**

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring, and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a

determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

**§ 217.58 Renewals and Modifications of Letters of Authorization.**

(a) A Letter of Authorization issued under §§ 216.106 and 217.57 of this chapter for the activity identified in § 217.50 will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and;

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comments before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 217.57 of this chapter for the activity identified in § 217.50 may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.50(b), a Letter of Authorization may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

[FR Doc. 2014–04996 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 79, No. 45
Friday, March 7, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2014–0007]**

### Monsanto Co.; Availability of Petition for Determination of Nonregulated Status of Maize Genetically Engineered For Protection Against Corn Rootworm and Resistance to Glyphosate

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status of maize designated as event MON 87411, which has been genetically engineered for protection against corn rootworm and resistance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are making the Monsanto Company petition available for review and comment to help us identify potential environmental and interrelated economic issues and impacts that the Animal and Plant Health Inspection Service may determine should be considered in our evaluation of the petition.

**DATES:** We will consider all comments that we receive on or before May 6, 2014.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/# !documentDetail;D=APHIS-2014-0007-0001*.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0007, 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-2014-0007* 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.

The petition is also available on the APHIS Web site at: *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS petition number 13–290–01p.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov*. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR Part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR Part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 13–290–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status of maize (*Zea mays*) designated as event MON 87411, which has been genetically engineered for protection against corn rootworm and resistance to the herbicide glyphosate. The Monsanto petition states that information collected during field trials and laboratory analyses indicates that MON 87411 maize is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR Part 340.

As described in the petition, Monsanto developed MON 87411 maize by adding a suppression cassette that expresses an inverted repeat sequence designed to match the sequence of corn rootworm. The expression of the suppression cassette results in the formation of a double-stranded RNA (dsRNA) transcript containing the *Snf7* gene. Upon consumption, the plant-produced dsRNA in MON 87411 results in corn rootworm mortality. MON 87411 maize also contains a *cry3Bb1* gene that produces a modified *Bacillus thuringiensis* (subsp. *kumamotoensis*) Cry3Bb1 protein to protect against corn rootworm larval feeding. In addition, MON 87411 maize contains the *cp4 epsps* gene from *Agrobacterium* sp. strain CP4 that confers resistance to the herbicide glyphosate. MON 87411 maize is currently regulated under 7 CFR Part 340. Interstate movements and field tests of MON 87411 maize have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the tests. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the

**Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice [1] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for GE organisms. In that notice we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with § 340.6(d) of the regulations and our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review and comment, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as corn growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decisionmaking documents.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public involvement (see footnote 1) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR Part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR Part 372).

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 28th day of February 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–04968 Filed 3–6–14; 8:45 am]

**BILLING CODE 3410–34–P**

[1] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Humboldt County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Humboldt County Resource Advisory Committee (RAC) will meet in Eureka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meetings are to provide updates regarding status of Secure Rural Schools Title II program and funding, discuss funding strategies and review and recommend potential projects eligible for funding.

**DATES:** The meetings will start at 5:30 p.m. and be held on the following dates:

- April 9, 2014.
- April 15, 2014.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest Office. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lynn Wright, RAC Coordinator, by phone at 707–441–3562 or via email at *hwright02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

**SUPPLEMENTARY INFORMATION:** Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/srnf.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing to be scheduled on the agenda 5 days prior to the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lynn Wright, RAC Coordinator, 1330 Bayshore Way, Eureka, California 95501; or by email at *hwright02@fs.fed.us;* or via facsimile at 707–445–8677.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 28, 2014.

**Tyrone Kelley,**

*Forest Supervisor.*

[FR Doc. 2014–04969 Filed 3–6–14; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Del Norte Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Del Norte Resource Advisory Committee (RAC) will meet in Eureka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meetings are to provide updates regarding status of Secure Rural Schools Title II program and funding, discuss funding strategies and review and recommend potential projects eligible for funding.

**DATES:** The meetings will all start at 6:00 p.m. on the following dates:

- April 1, 2014
- April 8, 2014
- April 24, 2014

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest Office. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lynn Wright, RAC Coordinator, by phone at 707–441–3562 or via email at *hwright02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

**SUPPLEMENTARY INFORMATION:** Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/srnf.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing to be scheduled on the agenda 5 days prior to the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lynn Wright, RAC Coordinator, 1330 Bayshore Way, Eureka, California 95501; by email at *hwright02@fs.fed.us;* or via facsimile at 707–445–8677.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 28, 2014.

**Tyrone Kelley,**

*Forest Supervisor.*

[FR Doc. 2014–04979 Filed 3–6–14; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Allocation of Duty-Exemptions for Calendar Year 2014 for Watch Producers Located in the United States Virgin Islands

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This action allocates calendar year 2014 duty exemptions for watch assembly producers (''program producers'') located in the United States Virgin Islands (''USVI'') pursuant to Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36 and Public Law 108–429 (''the Act'').

**FOR FURTHER INFORMATION CONTACT:** Supriya Kumar, Subsidies Enforcement Office; phone number: (202) 482–3530; fax number: (202) 501–7952; and email address: *Supriya.Kumar@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act, the Departments of the Interior and Commerce (''the Departments'') share responsibility for the allocation of duty exemptions among program producers in the United States territories of Guam, American Samoa and the Northern Mariana Islands.

In accordance with section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2013 is 1,866,000 units for the USVI. This amount was established in *Changes in Watch, Watch Movement and Jewelry Program for the U.S. Insular Possessions,* 65 FR 8048 (February 17, 2000). There are currently no program producers in Guam, American Samoa or the Northern Mariana Islands.

The criteria for the calculation of the calendar year 2014 duty-exemption allocations among program producers within a particular territory are set forth in section 303.14 of the regulations (15 CFR 303.14). The Departments have verified and, where appropriate, adjusted the data submitted in application form ITA–334P by USVI program producers and have inspected these producers' operations in accordance with section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2013, USVI program producers shipped 62,424 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of corporate income taxes paid by USVI program producers during calendar year 2013, and the creditable wages and benefits paid by these producers during calendar year 2013 to residents of the territory was a combined total of $1,087,105. The calendar year 2014 USVI annual duty exemption allocations, based on the data verified by the Departments, are as follows:

| Program producer | Annual allocation |
|---|---|
| Belair Quartz, Inc. ..... | 500,000 |

The balance of the units allocated to the USVI is available for new entrants into the program or existing program producers who request a supplement to their allocation.

Dated: February 26, 2014.

**Carole Showers,**

*Director, Office of Policy Enforcement and Compliance, International Trade Administration, Department of Commerce.*

Dated: February 28, 2014.

**Nikolao Pula,**

*Director of Office of Insular Affairs, Department of the Interior.*

[FR Doc. 2014–05013 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–DS–4310–93–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–893]**

### Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 18, 2014, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') results of redetermination,[1] pursuant to the CIT's *Remand Opinion and Order.*[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken*,[3] as clarified by *Diamond Sawblades,*[4] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination,*[5] *Amended Final 1 & Order,*[6] and *Amended Final 2*[7] and is amending those final and amended final determinations with respect to the 29 plaintiffs that were party to the litigation.[8]

**DATES:** Effective February 28, 2014.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–6905.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 27, 2004, the Department initiated the antidumping duty investigations of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam.[9] On July 16, 2004, the Department published the *Preliminary Determination,*[10] wherein we assigned a separate rate margin of 49.09 percent to 21 non-selected companies eligible for a separate rate. Subsequently, we amended the *Preliminary Determination* to include two additional non-examined companies to which we granted separate rate status.[11] On December 8, 2004, the Department published the *Final Determination* and on February 1, 2005, the Department published the *Amended Final 1 and Order,* assigning a final separate rate of 53.68 percent to 39 companies to which we granted separate rate status. On August 17, 2006, the Department published a second amended final determination, wherein we granted separate rate status to an additional 11 companies which were not granted a separate rate in the *Final Determination* or the *Amended Final 1 and Order.*[12] Of all the companies to which we granted separate rate status in *Amended Final 1 and Order* and *Amended Final 2,* 29 companies (the ''SR companies'') are plaintiffs subject to this *Remand Opinion and Order.* After the issuance of the *Amended Final 1 and Order,* the Department's *Final Determination* was challenged at the CIT by the mandatory respondents and was subsequently remanded to the Department for redeterminations.[13] The resulting recalculations of the mandatory respondents' investigation dumping margins were reduced to 5.07 percent, 7.20 percent, and 8.45 percent.[14] Consequently, as a result of the SR companies' litigation, in the *Remand Opinion and Order* the Department recalculated the weighted-average margin assigned to the SR companies based on the revised mandatory respondents' investigation dumping margins.

On September 11, 2013, the Department released the draft redetermination of remand and invited interested parties to comment. The Department received no comments on the draft redetermination[15] and issued

[1] *See* Final Results Of Redetermination Pursuant To Court Remand, Court No. 05–00182, dated September 26, 2013, available at: *http://enforcement.trade.gov/remands/index.html* (''*Beihai Final Remand Redetermination*'').

[2] *See Beihai Zhengwu Indus. Co.* v. *United States,* Consol. Court No. 05–00182 (CIT Aug. 13,2013) (''*Remand Opinion and Order*'').

[3] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*'').

[4] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*'').

[5] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997 (December 8, 2004) (''*Final Determination*'').

[6] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 5149 (February 1, 2005) (''*Amended Final 1 & Order*'').

[7] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value,* 71 FR 47484 (August 17, 2006) (''*Amended Final 2*'').

[8] These companies are: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co Ltd (Shantou City Qiaofeng Group Co Ltd); Hainan Fruit Vegetable Food Allocation Co., Ltd.; Pingyang Xinye Aquatic Products Co., Ltd.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Longfeng Foodstuffs Co., Ltd.; Shantou Ocean Freezing Industry And Trade General Corporation; Shantou Ruiyuan Industry Co., Ltd.; Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; Shantou Shengping Oceanstar Business Co., Ltd.; Shantou Wanya Food Factory Co., Ltd.; Shantou Yuexing Enterprise Company; Taizhou Zhonghuan Industrial Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhejiang Cereals, Oils, Foodstuffs Import Export Co., Ltd.; Zhejiang Daishan Baofa Aquatic Product Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Cereals Oils Foodstuffs Import Export Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; Zhoushan Industrial Co., Ltd.; Zhoushan Juntai Foods Co., Ltd.; Zhoushan Lizhou Fishery Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd.

[9] *See Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam,* 69 FR 3876 (January 27, 2004) (''*Initiation*'').

[10] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 42654 (July 16, 2004) (''*Preliminary Determination*'').

[11] *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 53409 (September 1, 2004).

[12] *See Amended Final 2.*

[13] *See Allied Pacific Food (Dalian) Co.* v. *United States,* 716 F. Supp. 2d 1339 (CIT 2010); *Shantou Red Garden Foodstuff Co.* v. *United States,* 880 F. Supp. 2d 1332 (CIT 2012); *see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision,* 76 FR 30100 (May 24, 2011) (''*Allied and Yelin Remand*'') and *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation,* 77 FR 66434 (November 5, 2012) (''*Red Garden Remand*'').

[14] *See Allied and Yelin Remand* and *Red Garden Remand.*

[15] *See* ''Memorandum to the File, from Irene Gorelik, Senior Analyst, re: Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China'' and ''Memorandum to the File, from Irene Gorelik, Senior Analyst, re; Recalculation of the Investigation Separate Rate Margin,'' both dated September 11, 2013.

the unchanged *Beihai Final Remand Redetermination* on September 26, 2013. No party contested the Department's remand redetermination. On February 18, 2014, the CIT affirmed all aspects of the Department's remand redetermination.[16]

**Timken Notice**

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 18, 2014, judgment sustaining the *Beihai Final Remand Redetermination* constitutes a final decision of that court that is not in harmony with the *Final Determination, Amended Final 1 & Order,* and *Amended Final 2.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondent was reviewed.

**Amended Final Determination**

Because there is now a final court decision with respect to the 29 litigants, the revised separate rate dumping margin is as follows:

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Beihai Zhengwu Industry Co., Ltd | 6.70 |
| Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng) | 6.70 |
| Hainan Fruit Vegetable Food Allocation Co., Ltd | 6.70 |
| Pingyang Xinye Aquatic Products Co., Ltd | 6.70 |
| Shantou Jinhang Aquatic Industry Co., Ltd | 6.70 |
| Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.) | 6.70 |
| Shantou Ocean Freezing Industry and Trade General Corporation | 6.70 |
| Shantou Ruiyuan Industry Co., Ltd | 6.70 |
| Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd | 6.70 |
| Shantou Shengping Oceanstar Business Co., Ltd | 6.70 |
| Shantou Wanya Food Factory Co., Ltd | 6.70 |
| Shantou Yuexing Enterprise Company | 6.70 |
| Taizhou Zhonghuan Industrial Co., Ltd | 6.70 |
| Yantai Wei-Cheng Food Co., Ltd | 6.70 |
| Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd | 6.70 |
| Zhejiang Daishan Baofa Aquatic Product Co., Ltd | 6.70 |
| Zhejiang Evernew Seafood Co., Ltd | 6.70 |
| Zhejiang Taizhou Lingyang Aquatic Products Co | 6.70 |
| Zhejiang Zhenglong Foodstuffs Co., Ltd | 6.70 |
| Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd | 6.70 |
| Zhoushan Diciyuan Aquatic Products Co., Ltd | 6.70 |
| Zhoushan Haichang Food Co. Ltd | 6.70 |
| Zhoushan Huading Seafood Co., Ltd | 6.70 |
| Zhoushan Industrial Co., Ltd | 6.70 |
| Zhoushan Juntai Foods Co., Ltd | 6.70 |
| Zhoushan Lizhou Fishery Co., Ltd | 6.70 |
| Zhoushan Putuo Huafa Sea Products Co., Ltd | 6.70 |
| Zhoushan Xifeng Aquatic Co., Ltd | 6.70 |
| Zhoushan Zhenyang Developing Co., Ltd | 6.70 |

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 28, 2014.

**Paul Piquado,**

*Assistant Secretary, for Enforcement and Compliance.*

[FR Doc. 2014–05018 Filed 3–6–14; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See Beihai Zhengwu Indus. Co.* v. *United States,* Slip Op. 14–18, Ct. No. 05–00182 (CIT 2014).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–968]**

### Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 19, 2014, the United States Court of International Trade (CIT) sustained the Department of Commerce's (Department's) results of redetermination, which recalculated the countervailable subsidy rate for the Zhongya Companies [1] in the countervailing duty (CVD) investigation of aluminum extrusions from the People's Republic of China (PRC) [2] pursuant to the CIT's remand order in *Zhaoqing.*[3] Consistent with the decision

[1] The Zhongya Companies are Zhaoqing New Zhongya Aluminum Co., Ltd, Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd.

[2] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011) (*Final Determination*).

[3] *See Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States,* 929 F. Supp. 2d 1324 (CIT 2013) (July 17, 2013) (*Zhaoqing*); *see also Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States,*

Continued

of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,*[4] as clarified by *Diamond Sawblades,*[5] the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's *Final Determination* and is therefore amending its *Final Determination.*

**DATES:** Effective March 3, 2014.[6]

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak, Office III, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, C129, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2209.

**SUPPLEMENTARY INFORMATION:** On April 4, 2011, the Department published the *Final Determination*. In the *Final Determination,* the Department determined that the Zhongya Companies received a countervailable subsidy with regard to the Government of China's provision of land-use rights located in the Zhaoqing High-Tech Industry Development Zone (ZHTIDZ) for less than adequate remuneration (LTAR) in 2006. Because the Department determined that it could not use Chinese or world market prices as a benchmark, it compared the price that the Zhongya Companies paid for its land-use rights with comparable market-based prices for land purchases; specifically, we used the ''indicative land values'' for land in Thai industrial estates, parks, and zones, which are published in the ''Asian Industrial Property Market Flash'' by Coldwell Banker Richard Ellis (CBRE), for benchmark purposes.[7]

In *Zhaoqing,* the CIT held that it ''cannot conclude that a reasonable reading of the record as a whole supports Commerce's rebuttal of Plaintiffs' claim that the land they leased was undeveloped in 2006 and therefore not comparable to a fully developed industrial park''[8] and remanded the Department's selection of Thai industrial land values as benchmarks for comparison with the land-use rights acquired by the Zhongya Companies for reconsideration or further explanation.[9]

In its final results of redetermination pursuant to *Zhaoqing,* the Department reconsidered, and revised, the land benchmark used to determine the benefit received by the Zhongya Companies in 2006. Specifically, we recalculated the countervailable subsidy provided to the Zhongya Companies using, instead of Thai industrial land prices, a benchmark based on the ''non-infrastructure'' land price listed for Subic Bay Freeport in the Philippines. As a result of this revision, the total net subsidy rate calculated for the Zhongya Companies changed from 8.02 percent *ad valorem* to 4.89 percent *ad valorem.*[10]

On February 19, 2014, the CIT affirmed the Department's final results of redetermination pursuant to remand.[11]

### Timken Notice

In its decision in *Timken*[12] as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 19, 2014, judgment in *Zhaoqing II* affirming the Department's redetermination on remand to rely on a benchmark from the Philippines, and which results in a revised rate for the Zhongya Companies (4.89 percent *ad valorem*), constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

### Amended Final Determination

Because there is now a final CIT decision with respect to the *Final Determination,* the Department amends its *Final Determination* for the Zhongya Companies.[13] The Department finds the following revised net subsidy rate exists:

| Company | *Ad Valorem* net subsidy rate |
|---|---|
| Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd. (collectively, the Zhongya Companies). | 4.89 percent *ad valorem* |

The cash deposit rate for the Zhongya Companies will be the rate listed above, effective March 3, 2014, and the Department will instruct U.S. Customs and Border Protection accordingly. This notice is issued and published in accordance with sections 516A(c)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 28, 2014.

**Paul Piquado,**

*Assistant Secretary, for Enforcement and Compliance.*

[FR Doc. 2014–05020 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–DS–P**

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Court No. 11–00181 (CIT 2014) (Order) (*Zhaoqing II*).

[4] *See Timken Co. v. United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[5] *See Diamond Sawblades Mfrs. Coalition v. United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[6] March 1, 2014, 10 days after the Court's decision was issued, falls on a Saturday. Therefore, the effective date is Monday, March 3, 2014. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] *See Final Determination,* and accompanying Issues and Decision Memorandum at ''Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR'' and Comment 24.

[8] *See Zhaoqing,* 929 F. Supp. 2d at 1329.

[9] *Id.*

[10] *See ''Zhaoqing New Zhongya Aluminum Co., Ltd. and Zhongya Shaped Aluminum (HK) Holding Ltd. v. United States,* Court No. 11–00181; Slip Op. 13–83 (CIT 2013), Final Results of Redetermination Pursuant to Court Remand,'' dated August 20, 2013 at 8.

[11] *See Zhaoqing II* at 2.

[12] *See Timken,* 893 F.2d at 341.

[13] As a result of the CIT's severance and consolidation of parties' challenges to the *Final Determination,* the *Final Determination* was previously amended, in *Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination,* 77 FR 74466 (December 14, 2012) (*Amended Final Determination*). The *Amended Final Determination* amended the ''all others'' rate but did not amend the Zhongya Companies' net subsidy rate.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD132**

### Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

**ACTION:** Notice of public workshops.

**SUMMARY:** Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in April, May, and June of 2014. Certain fishermen and shark dealers are

required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2014 and will be announced in a future notice.

**DATES:** The Atlantic Shark Identification Workshops will be held on April 10, May 15, and June 4, 2014.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on April 10, April 29, May 7, May 14, June 3, and June 27, 2014.

See **SUPPLEMENTARY INFORMATION** for further details.

**ADDRESSES:** The Atlantic Shark Identification Workshops will be held in Wilmington, NC; Bohemia, NY; and Manahawkin, NJ.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Manahawkin, NJ; Kitty Hawk, NC; Kenner, LA; Warwick, RI; Palm Coast, FL; and Ronkonkoma, NY.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

**FOR FURTHER INFORMATION CONTACT:** Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

**SUPPLEMENTARY INFORMATION:** The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

## Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 95 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

### *Workshop Dates, Times, and Locations*

1. April 10, 2014, 12 p.m.–4 p.m., Hampton Inn, 124 Old Eastwood Road, Wilmington, NC 28403.
2. May 15, 2014, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 10 Aero Road, Bohemia, NY 11716.
3. June 4, 2014, 12 p.m.–4 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

### *Registration*

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

### *Registration Materials*

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

### *Workshop Objectives*

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

## Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 172 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

*Workshop Dates, Times, and Locations*

1. April 10, 2014, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.
2. April 29, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
3. May 7, 2014, 9 a.m.–5 p.m., Hilton Inn, 901 Airline Drive, Kenner, LA 70062.
4. May 14, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.
5. June 3, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 55 Town Center Boulevard, Palm Coast, FL 32164.
6. June 27, 2014, 9 a.m.–5 p.m., Clarion Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

*Registration*

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

*Registration Materials*

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

*Workshop Objectives*

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

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

Dated: February 28, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–05016 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XS35**

### Marine Mammals; File No. 14450

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to the National Marine Fisheries Service's Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida 33149 [Principal Investigator: Dr. Keith Mullin] to conduct research on marine mammals.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

**FOR FURTHER INFORMATION CONTACT:** Kristy Beard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On October 19, 2009, notice was published in the **Federal Register** (74 FR 53467) that a request for a permit to conduct research on all cetacean species that occur in U.S. and international waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes takes by harassment during aerial and vessel-based line-transect sampling, acoustic sampling, behavioral observations, and vessel-based photo-identification and biopsy sampling. Tissue samples collected in other countries may be imported into the U.S. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit:

(1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 4, 2014.

**Perry F. Gayaldo,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2014–05014 Filed 3–6–14; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from the Procurement List.

**SUMMARY:** This action adds products to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

**DATES:** Effective April 7, 2014.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703)

603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

**SUPPLEMENTARY INFORMATION:**

## Additions

On January 24, 2014 (79 FR 4154–4155), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

## Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. The action will result in authorizing small entity to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

## End of Certification

Accordingly, the following products are added to the Procurement List:

*Products*

Tape, Electrical Insulation

*NSN:* 5970–01–245–7042—Black, 1″ w × 108 ft.
*NSN:* 5970–01–013–9367—White, ¾″ w × 66 ft.
*NPA:* Cincinnati Association for the Blind, Cincinnati, OH.
*Contracting Activity:* DEFENSE LOGISTICS AGENCY AVIATION, RICHMOND, VA.
*Coverage:* B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Contracting Office, Richmond, VA.

## Deletions

On January 24, 2014 (79 FR 4154–4155) and January 31, 2014 (79 FR 5383), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 USC 8501–8506 and 41 CFR 51–2.4.

## Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

## End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

*Products*

Kit, Combination Dustpan and Broom

*NSN:* 7290–00–NIB–0002.
*NPA:* New York City Industries for the Blind, Inc., Brooklyn, NY.
*Contracting Activity:* DEPARTMENT OF VETERANS AFFAIRS, NAC, HINES, IL.

Tape, Electronic Data Processing

*NSN:* 7045–01–115–0502.
*NPA:* North Central Sight Services, Inc., Williamsport, PA.
*Contracting Activity:* DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA.

Card, Index

*NSN:* 7530–00–281–1315.
*NPA:* Louisiana Association for the Blind, Shreveport, LA.
*Contracting Activity:* GENERAL SERVICES ADMINISTRATION, NEW YORK, NY.

Kit, Pre-Inked Stamps

*NSN:* 7520–00–NIB–1090.
*NSN:* 7520–00–NIB–1099.
*NSN:* 7520–00–NIB–1105.
*NSN:* 7520–00–NIB–1107.
*NPA:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
*Contracting Activity:* U.S. Postal Service, Washington, DC.

*Service*

*Service Type/Location:* Carpet Replacement Service, Smithsonian National Gallery of Art, 6th & Constitution Avenue NW., Washington, DC.
*NPA:* UNKNOWN.
*Contracting Activity:* NATIONAL GALLERY OF ARTS, WASHINGTON, DC.

**Barry S. Lineback,**
*Director, Business Operations.*

[FR Doc. 2014–04987 Filed 3–6–14; 8:45 am]

BILLING CODE 6353–01–P

# BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No: CFPB–2014–0005]**

## Agency Information Collection Activities: Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection titled, ''Debt Collection Survey from the Consumer Credit Panel.''

**DATES:** Written comments are encouraged and must be received on or before May 6, 2014 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail/Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

*Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Debt Collection Survey from the Consumer Credit Panel.

*OMB Control Number:* 3170–XXXX.

*Type of Review:* New collection (Request for a new OMB Control Number).

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 3,400.

*Estimated Total Annual Burden Hours:* 1,133.

*Abstract:* The CFPB plans to conduct a mail survey of consumers to learn about their experiences interacting with the debt collection industry. The survey will ask consumers about their experiences with debt collectors, such as whether they have been contacted by debt collectors in the past, whether they recognized the debt that was being collected, and about their interactions with the debt collectors. The survey will also ask consumers about their preferences for how they would like to be contacted by debt collectors, opinions about potential regulatory interventions in debt collection markets, and about their knowledge of their legal rights regarding debt collections. The information collected through this survey will be used to inform a CFPB rulemaking concerning debt collection and research purposes.

*Request for Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on 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 Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: February 26, 2014.

**Ashwin Vasan,**

*Chief Information Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2014–05010 Filed 3–6–14; 8:45 am]

**BILLING CODE 4810–AM–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2014–0001]**

## Consumer Advisory Board and Councils Solicitation of Applications for Membership

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice; Extension of Application Period.

**SUMMARY:** On January 15, 2014, Director Richard Cordray of the Consumer Financial Protection Bureau (''Bureau'') published an invitation to the public for application to its Consumer Advisory Board (the ''Board''), Community Bank Advisory Council, and Credit Union Advisory Council in the **Federal Register**, as warranted in the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Consumer Advisory Board and Councils application deadline was February 28, 2014. To allow interested persons more time to consider and submit an application for the Community Bank Advisory Board and Credit Union Advisory Board, the Bureau has determined that an extension of the application until March 14, 2014 is appropriate.

**DATES:** The application deadline for the Consumer Advisory Board and Councils Solicitation of Application published January 15, 2014, 79 FR 2636, is extended. Complete application packets must be received on or before 5:00 p.m. on or before March 14, 2014.

**ADDRESSES:** Complete application packets are required from each applicant. The three components of a complete application are: a résumé, a completed application, and a letter of recommendation from a third party. The appropriate forms can be accessed at: *http://www.consumerfinance.gov/blog/extended-deadline-apply-to-our-community-bank-advisory-council-and-credit-union-advisory-council/.*

If electronic submission is not possible, the completed application packet may be mailed to Christopher Banks, Consumer Financial Protection Bureau, 1700 G Street NW., 6108 E–A, Washington, DC 20552.

All applications for membership on the Board and Advisory Council should be sent:

- *Electronically: CFPB_BoardandCouncilApps@cfpb.gov.* We strongly encourage electronic submissions.
- *Mail:* Christopher Banks, Consumer Financial Protection Bureau, 1700 G Street NW., 6111 E–B, Washington, DC 20552. Submissions must be postmarked on or before 5:00 p.m. EST on March 14, 2014.
- *Hand Delivery/Courier in Lieu of Mail:* Christopher Banks, Consumer Financial Protection Bureau, 1700 G Street NW., 6111 E–B, Washington, DC 20552. Submissions must be received on or before 5:00 p.m. EST on March 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Christopher Banks, Program Analyst, Consumer Financial Protection Bureau, (202) 435–9064.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Bureau is charged with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws,'' so as to ensure that ''all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' Pursuant to Section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203 (''Dodd-Frank Act''), the Bureau's primary functions are:

1. Conducting financial education programs;
2. Collecting, investigating, and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and
6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

As described in more detail below, Section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

### III. Qualifications

Pursuant to Section 1014(b) of the Dodd-Frank Act, in appointing members

to the Board, ''the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' The determinants of ''expertise'' shall depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

Pursuant to Section 5 of the Community Bank Advisory Council Charter, in appointing members to the Advisory Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of community banks that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

Pursuant to section 5 of the Credit Union Advisory Council Charter, in appointing members to the Advisory Council the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of credit unions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and shall strive to have diversity in terms of points of view. Only current credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

The Bureau has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on the Board and Councils, and therefore, encourages applications from qualified candidates from these groups. The Bureau also has a special interest in establishing a Board that is represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

1. Represent the United States' geographic diversity; and

2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

## IV. Application Procedures

Any interested person may apply for membership on the Board or Advisory Council.

A complete application packet must include:

1. A recommendation letter from a third party describing the applicant's interests and qualifications to serve on the Board or Council;

2. A complete résumé or curriculum vitae for the applicant; and

3. A complete application.

To evaluate potential sources of conflicts of interest, the Bureau will ask prospective candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check. The Bureau will not review applications and will not answer questions from internal or external parties regarding applications until the application period has closed.

The Bureau will not entertain applications of federally registered lobbyists and individuals who have been convicted of a felony for a position on the Board and Councils.

Only complete applications will be given consideration for review of membership on the Board and Councils.

Dated: February 27, 2014.

**Christopher D'Angelo,**

*Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2014–04999 Filed 3–6–14; 8:45 am]

BILLING CODE 4810–AM–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

**DATE AND TIME:** Tuesday, March 11, 2014, 2:30–3:30 p.m. (ET).

**PLACE:** Corporation for National and Community Service, 1201 New York Avenue NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

**CALL–IN INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 888–790–3155 conference call access code number 9145451. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–677–4660, replay passcode 5040. The end replay date is March 18, 2014, 10:59 p.m. (CT).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

I. Chair's Opening Comments
  a. Call to Order, Welcome, and Preview of Today's Meeting Agenda
  b. Introduction and Acknowledgements
  c. Summary Status of Board interaction
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Program Specific Public Testimony by National Service Member
V. Public Comments
VI. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *jmauk@cns.gov* subject line: MARCH 2014 CNCS BOARD MEETING by 4:00 p.m. (ET) on March 7, 2014. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

**REASONABLE ACCOMMODATIONS:** The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green

at *igreen@cns.gov* or 202–606–6861 by 5 p.m. (ET) on December 13, 2013.

**CONTACT PERSON FOR MORE INFORMATION:** Jenny Mauk, Special Assistant to the CEO, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. Phone: 202–606–6615. Fax: 202–606–3460. TTY: 800–833–3722. Email: *jmauk@cns.gov.*

Dated: March 5, 2014.

**Valerie Green,**

*General Counsel.*

[FR Doc. 2014–05109 Filed 3–5–14; 4:15 pm]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–77]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–77 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 4, 2014.

**Aaron Siegel,**

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

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 26 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-77, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Norway for defense articles and services estimated to cost $80 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 13–77

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

(i) *Prospective Purchaser:* Norway

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* | $69 million |
| Other | $11 million |
| TOTAL | $80 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 36 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 8 Captive Air Training Missiles (CATMs), containers, support equipment, spare and repair parts, Common Munitions Bit/Reprogramming Equipment (CMBRE), publications and technical documentation, U.S. Government and contractor logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (YME)

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

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

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

(viii) *Date Report Delivered to Congress:* 26 February 2014

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

POLICY JUSTIFICATION

*Norway—AIM–120C–7 AMRAAM Missiles*

The Government of Norway has requested a possible sale of 36 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 8 Captive Air Training Missiles (CATMs), containers, support equipment, spare and repair parts, Common Munitions Bit/Reprogramming Equipment (CMBRE), publications and technical documentation, U.S. Government and contractor logistics support services, and other related elements of logistics support. The estimated cost is $80 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally which has been, and continues to be, an important force for political stability and economic progress in Europe.

The Government of Norway requires these capabilities for mutual defense, regional security, force modernization, and U.S. and NATO interoperability. This sale will enhance the Royal Norwegian Air Force's ability to defend Norway against future threats and contribute to current and future NATO operations.

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

The principal contractor will be Raytheon Corporation in Waltham, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Norway.

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

Transmittal No. 13–77

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

Annex

Item No. vii

(vii) *Sensitivity of Technology*

1. AIM–120C–7 Advanced Medium Range Air-to-Air Missile (AMRAAM): The AIM–120 is a radar guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM All Up Round (AUR) is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

2. A determination has been made that Norway can provide substantially the same degree of protection for the sensitive information being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objective outlined in the Policy Justification.

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

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2014–04989 Filed 3–6–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notification of an Open Meeting of the National Defense University Board of Visitors (BOV)

**AGENCY:** National Defense University, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Defense University Board of Visitors (BOV) will take place. This meeting is open to the public.

**DATES:** The meeting will be held on Friday, March 14, 2014, from 2:30 p.m. to 4:30 p.m.

**ADDRESSES:** The Board of Visitors meeting will be held at Lincoln Hall, Building 64, Room 2315, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319–5066.

**FOR FURTHER INFORMATION CONTACT:** The point of contact for this notice of open meeting is Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

The agenda will focus on curricula changes at the National Defense University. Limited space made available for observers will be allocated on a first come, first served basis. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to the point of contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. (Subject Line: Comment/Statement to the NDU BOV).

Due to events beyond the control of the Designated Federal Officer, the meeting agenda for the scheduled meeting of National Defense University Board of Visitors for March 14, 2014, the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: March 4, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–04976 Filed 3–6–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Proposed Agency Information Collection

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. 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, 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 collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before May 6, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to LaReina Parker, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone, (202) 586–6493, or by fax at (202) 586–2164, or by email at *Part810.SNOPR@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to LaReina Parker, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone, (202) 586–6493; *Part810.SNOPR@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1901–0263; (2) Information Collection Request Title: Assistance to Foreign Atomic Energy Activities; (3) Type of Request: Reinstatement; (4) Purpose: Information will be collected from persons who directly or indirectly engage or participate in the development or production of special nuclear material outside the United States. Information will be used to inform commercial nuclear licensing and policy decisions; (5) Annual Estimated Number of Respondents: 145; (6) Annual Estimated Number of Total Responses: 322; (7) Annual Estimated Number of Burden Hours: 966; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $999.50.

**Authority:** Section 57 b.(2) of the Atomic Energy Act (AEA) of 1954, as amended by section 302 of the Nuclear Nonproliferation Act of 1978 (NNPA) enacted by Public Law 95–242.

Issued in Washington, DC, on February 27, 2014.

**Richard Goorevich,**

*Senior Policy Advisor, Office of Nonproliferation and International Security.*

[FR Doc. 2014–04984 Filed 3–6–14; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC14–61–000.
*Applicants:* MACH Gen, LLC, New Harquahala Generating Company, LLC, New Athens Generating Company, LLC, Millennium Power Partners, L.P.
*Description:* Application of MACH Gen, LLC, *et. al.* for Disposition of Jurisdictional Facilities under Section 203 of the FPA under.
*Filed Date:* 2/27/14.
*Accession Number:* 20140227–5128.
*Comments Due:* 5 p.m. ET 4/28/14.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–1179–018.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Integrated Marketplace Third Compliance Filing to be effective 3/1/2014.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5228.
*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER13–1188–020.
*Applicants:* Pacific Gas and Electric Company.
*Description:* WDT2 and Western CoO Settlement Compliance Filing to be effective 11/1/2013.
*Filed Date:* 1/15/14.
*Accession Number:* 20140115–5001.
*Comments Due:* 5 p.m. ET 3/20/14.

*Docket Numbers:* ER14–693–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—EM BR 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5227.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–694–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—EM BM 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5225.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–696–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—Dow Plaq 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5224.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–697–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—Dow UC 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5223.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–700–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—Oxy 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5222.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–701–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—SRW Cogen 2–25–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5230.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–702–002.
*Applicants:* Entergy Arkansas, Inc.
*Description:* EAI LBA Agreement Refile—Calpine PB 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5220.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–704–002.
*Applicants:* Entergy Services, Inc.
*Description:* EES LBA Agreement Refile—Sabine Cogen 2–26–2014 to be effective 12/31/9998.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5226.
*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–772–002.
*Applicants:* Fortistar North Tonawanda Inc.
*Description:* Second Supplemental Filing to be effective 2/26/2014.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5179.
*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1040–000.
*Applicants:* Lumens Energy Supply LLC.
*Description:* Supplement to January 17, 2014 Lumens Energy Supply LLC tariff filing.
*Filed Date:* 2/26/14.
*Accession Number:* 20140226–5067.

*Comments Due:* 5 p.m. ET 3/12/14.

*Docket Numbers:* ER14–1375–000.

*Applicants:* American Electric Power Service Corporation, Appalachian Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Indiana Michigan Power Company, PJM Interconnection, L.L.C.

*Description:* AEP submits revisions to PJM OATT Attachment H–14B Pt II Worksheet O re PBOP to be effective 7/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5195.

*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1376–000.

*Applicants:* PacifiCorp.

*Description:* Termination of BPA Construction Agreement (Summer Lake PMU) to be effective 5/6/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5215.

*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1377–000.

*Applicants:* Red Wolf Energy Trading.

*Description:* cancellation to be effective 3/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5216.

*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1378–000.

*Applicants:* Old Dominion Electric Cooperative, PJM Interconnection, L.L.C.

*Description:* Original SA No. 3746 and Cancellation of SA No. 3594 re ODEC–DVP NITSA to be effective 4/1/2014.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5229.

*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1379–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Ministerial Filing of Non-Substantive Tariff Revisions to Attachment AE (EIS) to be effective 8/20/2012.

*Filed Date:* 2/26/14.

*Accession Number:* 20140226–5231.

*Comments Due:* 5 p.m. ET 3/19/14.

*Docket Numbers:* ER14–1380–000.

*Applicants:* Public Service Company of New Mexico.

*Description:* Executed NITSA/NOA between PNM and the Jicarilla Apache Nation to be effective 4/28/201.

*Filed Date:* 2/27/14.

*Accession Number:* 20140227–5097.

*Comments Due:* 5 p.m. ET 3/20/14.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RD14–4–000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards for Interchange Scheduling and Coordination.

*Filed Date:* 2/27/14.

*Accession Number:* 20140227–5129.

*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* RD14–5–000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards MOD–032–1 and MOD–033–1.

*Filed Date:* 2/25/14.

*Accession Number:* 20140225–5151.

*Comments Due:* 5 p.m. ET 3/27/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 27, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04964 Filed 3–6–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–1349–000]**

### Union Carbide Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Union Carbide Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Proceduren (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 20, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04966 Filed 3–6–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–1373–000]**

### Energy Utility Group, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Energy Utility Group, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 21, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04963 Filed 3–6–14; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER14–1348–000]**

### The Dow Chemical Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of The Dow Chemical Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 20, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04965 Filed 3–6–14; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as

having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Prohibited Docket No. | Filed date | Presenter or requester |
|---|---|---|
| 1. P–2299–000 | 2–7–14 | Modesto Irrigation District. |
| 2. CP13–113–000 | 2–24–14 | Alan Spahr. |

| Exempt Docket No. | Filed date | Presenter or requester |
|---|---|---|
| 1. P–12790–002 | 2–11–14 | FERC Staff.[1] |
| 2. P–13590–000 | 2–12–14 | FERC Staff.[2] |
| 3. P–2305–036 | 2–24–14 | Hon. Mary L. Landrieu. |
| 4. CP13–25–000 | 2–27–14 | FERC Staff.[3] |

[1] Telephone record.
[2] Email record.
[3] Telephone record.

Dated: February 28, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–04962 Filed 3–6–14; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9013–8]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 02/24/2014 Through 02/28/2014

Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

*EIS No. 20140053, Draft EIS, FHWA, IL,* US 51 Pana to Centralia, Comment Period Ends: 04/21/2014, Contact: Catherine A. Batey 217–492–4600.

*EIS No. 20140054, Revised Draft EIS, USFS, CA,* Harris Vegetation Management Project, Comment Period Ends: 04/25/2014, Contact: Emelia H. Barnum 530–926–4511 ext. 1600.

*EIS No. 20140055, Final Supplement, USACE, FL,* Jacksonville Harbor Navigation, Review Period Ends: 04/07/2014, Contact: Samantha Borer 904–232–1066.

*EIS No. 20140056, Draft EIS, USFS, CO,* Vail Mountain Recreation Enhancements Project, Comment Period Ends: 04/21/2014, Contact: Roger Poirier 970–945–3212.

*EIS No. 20140057, Final EIS, BOEM, 00,* PROGRAMMATIC—Geological and Geophysical Activities in Federal Waters of the Mid- and South Atlantic Outer Continental Shelf and Adjacent State Waters, Review Period Ends: 04/07/2014, Contact: Gary D. Goeke 504–736–3233.

*EIS No. 20140058, Final EIS, USFS, AZ,* Kaibab National Forest Plan Revision, Review Period Ends: 06/05/2014, Contact: Ariel Leonard 928–635–8283.

*EIS No. 20140059, Final Supplement, NRC, WY,* Ross In-Situ Leach Recovery (ISR) Project, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Review Period Ends: 04/07/2014, Contact: Johari Moore 301–415–7694.

*EIS No. 20140060, Draft Supplement, USACE, MS,* PROGRAMMATIC EIS—Mississippi Coastal Improvements Program (MsCIP), Comprehensive Barrier Island Restoration, Hancock, Comment Period Ends: 04/21/2014, Contact: Susan I. Rees 251–694–4141.

*EIS No. 20140061, Final EIS, FERC, NY,* Rockaway Delivery Lateral and Northeast Connector Projects, Review Period Ends: 04/07/2014, Contact: Kara Harris 202–502–6296.

**Amended Notices**

*EIS No. 20130381, Draft EIS, FHWA, TX,* US 181 Harbor Bridge Project, Comment Period Ends: 03/18/2014, Contact: Gregory S. Punske 512–536–5960.

Revision to the FR Notice Published 01/03/2014; Extending Comment Period from 03/03/2014 to 03/18/2014.

Dated: March 4, 2014.

**James G. Gavin,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 2014–05011 Filed 3–6–14; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday March 6, 2014 At The Conclusion Of The Open Meeting.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This Meeting Will Be Closed To The Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the

implementation of a proposed Commission action.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary.*

[FR Doc. 2014–05042 Filed 3–5–14; 11:15 am]

BILLING CODE 6715–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 Day–14–14CL]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

An Investigation of Lung Health at an Indium-Tin Oxide Production Facility—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act, Public Law 91–596 (section 20[a][1]), authorizes NIOSH to conduct research to advance the health and safety of workers. NIOSH is proposing to conduct a study regarding the lung health of workers at an indium-tin oxide production facility.

Indium-tin oxide (ITO) is a sintered material used in the manufacture of devices such as liquid crystal displays, touch panels, solar cells, and architectural glass. Indium lung disease is a novel, potentially fatal industrial disease that has occurred in workers making, using, or recycling ITO. This project aims to understand and prevent this occupational lung disease by investigating the relationship between exposure and lung health among current ITO manufacturing workers.

CDC requests Office of Management and Budget (OMB) approval to collect standardized information from current employees of the ITO production facility through an informed consent document, an interviewer-administered questionnaire, and a contact information form. As part of the same project, employees will be offered the opportunity to participate in medical testing and personal air sampling.

The questionnaire will collect contact information, demographic information, respiratory symptoms and diagnoses, work history, and cigarette smoking history. The questionnaire will allow NIOSH to report individual medical test results to each participant and to analyze aggregate data from the workforce to determine risk factors for abnormal lung health indices derived from the medical test results. The individual results will be used by employees and their personal physicians to make medical decisions, such as whether to pursue additional testing. The aggregate results will be used by NIOSH, facility management, and employees in ongoing efforts to reduce exposures and monitor key health indices.

For this study, we will recruit all current employees of the ITO production facility. Participation is voluntary. We anticipate approximately 100 study participants. Employees who wish to participate in the questionnaire and medical testing will review and sign an informed consent document. Employees who wish to participate in the personal air sampling and would like to receive personal results will complete a contact information form. Participants who wish to release medical records to NIOSH or to have NIOSH release the results of our medical testing to a personal physician will need to complete the appropriate records release forms.

The questionnaire will be administered privately at the workplace during normal working hours by trained NIOSH staff. Employees who are not available at the workplace during the study will be offered the opportunity to respond to the questionnaire at a later date by telephone.

There are no costs to participants other than their time.

The total estimated burden for the one-time collection of data is 254 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Current ITO production facility employees | Recruitment letter | 100 | 1 | 5/60 |
| | Consent to participate in a research study | 95 | 1 | 15/60 |
| | Authorization to disclose health information | 95 | 1 | 5/60 |
| | Indium facility questionnaire | 95 | 1 | 20/60 |
| | Medical testing | 95 | 1 | 100/60 |
| | Script for collection of industrial hygiene samples. | 95 | 1 | 5/60 |
| | Personal air sampling results contact information form. | 95 | 1 | 5/60 |
| | Exposure monitoring | 95 | 1 | 5/60 |

**Leroy Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04970 Filed 3–6–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–14–14LA]**

### 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 D–74, 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**

Annual Survey of Colorectal Cancer Control Activities Conducted by States and Tribal Organizations—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In July 2009, the Centers for Disease Control and Prevention's Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, funded the Colorectal Cancer Control Program (CRCCP) for a five-year period. Through a competitive application process, 22 states and four tribal organizations received cooperative agreement awards. In 2010, three additional states were funded, bringing the total number of grantees to 29. The purpose of the CRCCP is to promote colorectal cancer (CRC) screening to increase population-level screening rates to 80% and, subsequently, to reduce CRC incidence and mortality (*www.cdc.gov/cancer/crccp/*). The CRCCP includes two program components: (1) CRC screening of low-income, uninsured and underinsured people (screening provision) and (2) implementation of interventions to increase population-level screening rates (screening promotion).

The CRCCP is based on a social-ecological framework that emphasizes the implementation of evidence-based strategies at the interpersonal, organizational, community, and policy levels. Grantees are strongly encouraged to implement one or more of the five evidence-based strategies that are recommended in the *Guide to Community Preventive Services* (*Community Guide; www.thecommunityguide.org/cancer/index.html*).

As a comprehensive, organized screening program, the CRCCP supports activities including program management, partnership development, public education and targeted outreach, screening and diagnostic services, patient navigation, quality assurance and quality improvement, professional development, data management and utilization, and program monitoring and evaluation. For clinical service delivery, grantees fund health care providers in their state or tribal organization to deliver colorectal cancer screening, diagnostic evaluation, and treatment referrals for those diagnosed with cancer. Through direct screening efforts in the first three years of the CRCCP, 26,565 individuals were screened, 4,059 cases of precancerous polyps were detected and removed, and 74 cancers were diagnosed and treated.

The purpose of the proposed data collection is to annually assess program implementation, particularly related to the use of evidence-based strategies. The primary survey audience is CRCCP program grantees (program directors or managers); however, the survey will also be administered to a comparison group of states or tribes that do not currently receive CRCCP funding. Respondents for the non-CRCCP funded survey group will be program directors or managers from the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), a comparable group with whom the Centers for Disease Control and Prevention (CDC) has an established relationship.

The Web-based survey includes questions about respondent background, program activities, clinical service delivery, monitoring and evaluation, partnerships, training and technical assistance needs, and program management and integration. Questions are of various types including dichotomous and multiple response. The estimated burden per response is 75 minutes. There are two versions of the survey: One for CRCCP-funded states and tribal organizations, and one for states and tribal organizations that do not currently receive CRCCP funding. All information will be collected electronically.

The assessment will enable CDC to gauge progress in meeting CRCCP program goals, identify implementation activities, monitor efforts aimed at impacting population-based screening, identify technical assistance needs of state, tribe and territorial health department cancer control programs, and identify implementation models with potential to expand and transition to new settings to increase program impact and reach.

The assessment will also identify successful activities that should be maintained, replicated, or expanded as well as provide insight into areas that need improvement. Current CRCCP funding is through June 2015, however, CDC anticipates that the program will be renewed. Data obtained from the unfunded states or tribes will provide comparison data to facilitate identification of similarities or differences, if any, in colorectal cancer screening activities, including the use of evidence-based strategies to promote and provide cancer screening. OMB approval is requested for three years. Participation in the survey is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) | Total burden (in hr) |
|---|---|---|---|---|---|
| CRCCP Program Directors (PD) or Program Managers (PM). | CRCCP Grantee Survey of Program Implementation. | 29 | 1 | 75/60 | 36 |
| PD or PM from States or Tribes that do not receive CRCCP funding. | Survey of Colorectal Cancer Prevention and Control Activities. | 33 | 1 | 75/60 | 41 |
| Total | | | | | 77 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04973 Filed 3–6–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–14–0020]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Coal Workers' Health Surveillance Program (CWHSP)—(0920–0200, Expiration 06/30/2014)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH would like to submit an Information Collection Request (ICR) to revise the data collection instruments being utilized within the Coal Workers' Health Surveillance Program (CWHSP). The current ICR incorporates all four components that fall under the CWHSP. Those four components include: Coal Workers' X-ray Surveillance Program (CWXSP), B Reader Program, Enhanced Coal Workers' Health Surveillance Program (ECWHSP), and National Coal Workers' Autopsy Study (NCWAS).

The CWHSP is a congressionally-mandated medical examination program for monitoring the health of underground coal miners, established under the Federal Coal Mine Health and Safety Act of 1969, as amended in 1977 and 2006, PL–95–164 (the Act). The Act provides the regulatory authority for the administration of the CWHSP. This Program is useful in providing information for protecting the health of miners (whose participation is entirely voluntary), and also in documenting trends and patterns in the prevalence of coal workers' pneumoconiosis ('black lung' disease) among miners employed in U.S. coal mines. The 4,420 estimated annualized hours of burden is based on the following:

- Coal Mine Operators Plan (2.10)—Under 42 CFR 37.4, every coal operator and construction contractor for each underground coal mine must submit a coal mine operator's plan every 3 years, providing information on how they plan to notify their miners of the opportunity to obtain the chest radiographic examination. To complete this form with all requested information (including a roster of current employees) takes approximately 30 minutes.
- Facility Certification Document (2.11)—X-ray facilities seeking NIOSH-approval to provide miner radiographs under the CWHSP must complete an approval packet which requires approximately 30 minutes for completion.
- Miner Identification Document (2.9)—Miners who elect to participate in the CWHSP must fill out this document which requires approximately 20 minutes. This document records demographic and occupational history, as well as information required under the regulations from x-ray facilities in relation to coal miner examinations. In addition to completing this form, the process of capturing the chest image takes approximately 15 minutes.
- Chest Radiograph Classification Form (2.8)—Under 42 CFR part 37, NIOSH utilizes a radiographic classification system developed by the International Labour Office (ILO), in the determination of pneumoconiosis among underground coal miners. Physicians (B Readers) fill out this form regarding their interpretations of the radiographs (each image has at least two separate interpretations). Based on prior practice it takes the physician approximately three minutes per form.
- Physician Application for Certification (2.12)—Physicians taking the B Reader examination are asked to complete this registration form which provides demographic information as well as information regarding their medical practices. It typically takes the physician about 10 minutes to complete this form.
- Spirometry Testing—Miners participating in the ECWHSP component of the Program are asked to perform a spirometry test which requires no additional paperwork on the part of the miner, but does require approximately 15 to 20 minutes for the test itself. Since spirometry testing is offered as part of the ECWHSP only, the 2,500 respondents listed in the burden table below account for about half of the total participants in the CWHSP.
- Pathologist Invoice—42 CFR 37.202 specifies procedures for the NCWAS. The invoice submitted by the pathologist must contain a statement that the pathologist is not receiving any other compensation for the autopsy. Each participating pathologist may use their individual invoice as long as this statement is added. It is estimated that only five minutes is required for the pathologist to add this statement to the standard invoice that they routinely use.
- Pathologist Report—42 CFR 37.203 provides the autopsy specifications. The pathologist must submit information found at autopsy, slides, blocks of tissue, and a final diagnosis indicating presence or absence of pneumoconiosis. The format of the autopsy reports are variable depending on the pathologist conducting the autopsy. Since an autopsy report is routinely completed by a pathologist, the only additional

burden is the specific request for a clinical abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only five minutes of additional burden is estimated for the pathologist's report.

• Consent, Release and History Form (2.6)—This form documents written authorization from the next-of-kin to perform an autopsy on the deceased miner. A minimum of essential information is collected regarding the deceased miner including the occupational history and smoking history. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete this form.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden/ response (in hrs) |
|---|---|---|---|---|
| Coal Mine Operators | Form 2.10 | 200 | 1 | 30/60 |
| X-ray Facility Supervisor | Form 2.11 | 100 | 1 | 30/60 |
| X-ray—Coal Miners | No form required | 5,000 | 1 | 15/60 |
| Coal Miners | Form 2.9 | 5,000 | 1 | 20/60 |
| B Reader Physicians | Form 2.8 | 10,000 | 1 | 3/60 |
| Physicians taking the B Reader Examination | Form 2.12 | 100 | 1 | 10/60 |
| Spirometry Test—Coal Miners | No form required | 2,500 | 1 | 20/60 |
| Pathologist | Invoice—No standard form | 5 | 1 | 5/60 |
| Pathologist | Pathology Report—No standard form | 5 | 1 | 5/60 |
| Next-of-kin for deceased miner | Form 2.6 | 5 | 1 | 15/60 |

**Leroy Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04971 Filed 3–6–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–14–0904]**

### 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 D–74, 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**

SEARCH for Diabetes in Youth Study (OMB No. 0920–0904, exp. 11/30/2014)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Diabetes is one of the most common chronic diseases among children in the United States. When diabetes strikes during childhood, it is routinely assumed to be type 1, or juvenile-onset, diabetes. Type 1 diabetes (T1D) develops when the body's immune system destroys pancreatic cells that make the hormone insulin. Type 2 diabetes begins when the body develops a resistance to insulin and no longer uses it properly. As the need for insulin rises, the pancreas gradually loses its ability to produce sufficient amounts of insulin to regulate blood sugar. Reports of increasing frequency of both type 1 and type 2 diabetes in youth have been among the most concerning aspects of the evolving diabetes epidemic. In response to this growing public health concern, the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) funded the SEARCH for Diabetes in Youth Study.

The SEARCH for Diabetes in Youth Study began in 2000 as a multi-center, epidemiological study, conducted in six geographically dispersed clinical study centers that reflected the racial and ethnic diversity of the U.S. Phases 1 (2000–2005) and 2 (2005–2010) produced estimates of the prevalence and incidence of diabetes among youth age <20 years, according to diabetes type, age, sex, and race/ethnicity, and characterized selected acute and chronic complications of diabetes and their risk factors, as well as the quality of life and quality of health care. In Phases 1 and 2, the clinical centers and a data coordinating center were funded through cooperative agreements. The information collected at that time was not provided directly to CDC.

Phase 3 (2011–present) builds upon previous efforts. Five clinical sites collect patient-level information that is compiled by a data coordinating center. CDC obtained OMB approval to receive the information in 2011 (SEARCH for Diabetes in Youth, OMB No. 0920–0904, exp. 11/30/2014). Phase 3 includes a case registry of youth <20 years of age who have been diagnosed with diabetes, and a longitudinal cohort research study about SEARCH cases whose diabetes was incident in 2002 or later. To date, SEARCH Phase 3 has identified an average of 1,361 incident cases of diabetes among youth under 20 years each year of the study and has completed an average of 1,088 participant surveys each year (80% participation rate among registry study participants). As of November 2013,

SEARCH Phase 3 has completed visits for 1,839 cohort study participants.

CDC plans to continue information collection for two additional years, with minor changes. Participants in the registry study will continue to complete a Medication Inventory and an Initial Participant Survey; however, the in-person study examination will be discontinued. This change will result in a decrease in burden per respondent. CDC estimates that each clinical site will identify and register an average of 255 cases per year, for a total 1,275 cases across all sites.

No data collection changes are planned for the cohort study. CDC estimates that each clinical site will conduct follow-up on an average of 142 cases per year, for a total of 710 cases across all sites. The items collected for each case include a Health Questionnaire (Youth version), an additional Health Questionnaire (Parent version), Center for Epidemiologic Study-Depression, Quality of Care, Pediatric Quality of Life Survey (Peds QL), SEARCH Michigan Neuropathy Screening Instrument, Diabetes Eating Survey, Low Blood Sugar Survey, Supplemental Survey, Tanner Stage, Retinal Photo, Family Conflict Survey, Pediatric Diabetes Quality of Life Scale, Physical Exam, Specimen Collection, and Food Frequency Questionnaire.

Findings from the registry study will be used to estimate the incidence of diabetes in youth in the U.S. Findings from the cohort study will be used to estimate the prevalence and incidence of risk factors and complications associated with diabetes in youth, including chronic microvascular complications (retinopathy, nephropathy, and autonomic neuropathy) and selected markers of macrovascular complications (hypertension, arterial stiffness) of diabetes.

Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) | Total burden (in hr) |
|---|---|---|---|---|---|
| SEARCH Registry Study Participants | Medication Inventory | 1,275 | 1 | 5/60 | 106 |
| | Initial Participant Survey | 1,275 | 1 | 10/60 | 213 |
| SEARCH Cohort Study Participants | Health Questionnaire-Youth | 710 | 1 | 15/60 | 178 |
| | Health Questionnaire-Parent | 710 | 1 | 15/60 | 178 |
| | CES-Depression | 710 | 1 | 4/60 | 47 |
| | Quality of Care | 710 | 1 | 13/60 | 154 |
| | Peds QL | 710 | 1 | 5/60 | 59 |
| | SEARCH MNSI Neuropathy | 710 | 1 | 10/60 | 118 |
| | Diabetes Eating Survey | 710 | 1 | 5/60 | 59 |
| | Low Blood Sugar Survey | 710 | 1 | 5/60 | 59 |
| | Supplemental Survey | 710 | 1 | 10/60 | 118 |
| | Tanner Stage | 710 | 1 | 5/60 | 59 |
| | Retinal Photo | 710 | 1 | 15/60 | 178 |
| | Family Conflict Survey | 710 | 1 | 5/60 | 59 |
| | Pediatric Diabetes QOL Scale | 710 | 1 | 5/60 | 59 |
| | Physical Exam | 710 | 1 | 3 | 2,130 |
| | Specimen Collection | 710 | 1 | 20/60 | 237 |
| | Food Frequency Questionnaire | 710 | 1 | 20/60 | 237 |
| Total | | | | | 4,248 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04974 Filed 3–6–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–14–0138]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043 (OMB No. 0920–0138, Expiration 8/31/2014)—Revision—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH has the responsibility under the Occupational Safety and Health Administration's Cotton Dust Standard, 29 CFR 1920.1043, for approving courses to train technicians to perform pulmonary function testing in the cotton industry. Successful completion of a NIOSH-approved course is mandatory under the standard.

To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors (universities, hospitals, and private consulting firms) who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the approval period, which is limited to five years. The application form and added materials, including an agenda,

curriculum vitae, and course materials are reviewed by NIOSH to determine if the applicant has developed a program which adheres to the criteria required in the standard. Following approval, any subsequent changes to the course are submitted by course sponsors via letter or email and reviewed by NIOSH staff to assure that the changes in faculty or course content continue to meet course requirements.

Course sponsors also voluntarily submit an annual report to inform NIOSH of their class activity level and any faculty changes. Sponsors who elect to have their approval renewed for an additional 5 year period submit a renewal application and supporting documentation for review by NIOSH staff to ensure the course curriculum meets all current standard requirements.

Approved course sponsors that elect to offer NIOSH-Approved Spirometry Refresher Courses must submit a separate application and supporting documents for review by NIOSH staff. Institutions and organizations throughout the country voluntarily submit applications and materials to become course sponsors and carry out training. Submissions are required for NIOSH to evaluate a course and determine whether it meets the criteria in the standard and whether technicians will be adequately trained as mandated under the standard. NIOSH will disseminate a one-time customer satisfaction survey to course directors and sponsor representatives to evaluate our service to courses, the effectiveness of the program changes implemented since 2005, and the usefulness of potential Program enhancements.

The annualized figures slightly over-estimate the actual burden, due to rounding of the number of respondents for even allocation over the three-year clearance period. The estimated annual burden to respondents is 201 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Potential Sponsors | NIOSH-Approved Spirometry Testing Course Application. | 3 | 1 | 3.5 |
| | Annual Report | 35 | 1 | 30/60 |
| | NIOSH-Example of email request for course change. | 12 | 1 | 45/60 |
| | NIOSH-Approved Spirometry Course Sponsorship Renewal Application. | 13 | 1 | 6 |
| | NIOSH-Approved Spirometry Refresher Course Application. | 10 | 1 | 8 |
| | One-Time Customer Satisfaction Survey | 23 | 1 | 12/60 |

**Leroy Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–04972 Filed 3–6–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10518]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by May 6, 2014.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786–1326

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

**CMS–10518 Application for Participation in the Intravenous Immune Globulin (IVIG) Demonstration**

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

*1. Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Application for Participation in the Intravenous Immune Globulin (IVIG) Demonstration; Use: Traditional fee-for-service (FFS) Medicare covers some or all components of home infusion services depending on the circumstances. By special statutory provision, Medicare Part B covers intravenous immune globulin (IVIG) for persons with primary immune deficiency disease (PIDD) who wish to receive the drug at home. However, Medicare does not separately pay for any services or supplies to administer it if the person is not homebound and otherwise receiving services under a Medicare Home Health episode of care. As a result, many beneficiaries have chosen to receive the drug at their doctor's office or in an outpatient hospital setting. On Tuesday, January 3, 2012, the President signed into law the ''Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012''. The act authorizes a 3-year demonstration under Part B of Title XVIII of the Social Security Act to evaluate the benefits of providing payment for items and services needed for the in-home administration of IVIG for the treatment of PIDD.

The statute limited the demonstration to 4,000 beneficiaries and $45 million, including administrative expenses for implementation and evaluation as well as benefit costs. The statute also required that an evaluation of the demonstration be conducted. Under this demonstration, Medicare will issue under Part B a bundled payment for all medically necessary supplies and services to administer IVIG in the home to enrolled beneficiaries who are not otherwise homebound and receiving home health care benefits. In order to implement the demonstration and ensure that statutory limits are not exceeded, it is necessary to positively enroll beneficiaries in the demonstration.

This collection of information is for the application to participate in the demonstration. Participation is voluntary and may be terminated by the beneficiary at any time. Beneficiaries who do not participate will continue to be eligible to receive all of the regular Medicare Part B benefits that they would be eligible for in the absence of the demonstration. *Form Number:* CMS–10518 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Individuals and households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000 *Total Annual Hours:* 1,000. (For policy questions regarding this collection contact Jody Blatt at 410–786–6921.)

Dated: March 4, 2014.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2014–04998 Filed 3–6–14; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10215 and CMS–10416]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by April 7, 2014.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786–1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section

3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicaid Payment for Prescription Drugs—Physicians and Hospital Outpatient Departments Collecting and Submitting Drug Identifying Information to State Medicaid Programs; *Use:* In accordance with the Deficit Act of 2005, states are required to provide for the collection and submission of utilization data for certain physician-administered drugs in order to receive federal financial participation for these drugs. Physicians, serving as respondents to states, submit National Drug Code numbers and utilization information for ''J'' code physician-administered drugs so that the states will have sufficient information to collect drug rebate dollars. *Form Number:* CMS–10215 (OCN: 0938–1026); *Frequency:* Weekly; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 20,000; *Total Annual Responses:* 3,910,000; *Total Annual Hours:* 16,227. (For policy questions regarding this collection contact Bernadette Leeds at 410–786–9463).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Blueprint for Approval of Affordable Health Insurance Marketplaces; *Use:* All states (including the 50 states, the territories, and the District of Columbia, herein referred to as ''states'') had the opportunity under Section 1311(b) of the Affordable Care Act to establish an Exchange, also known as a ''Marketplace'', no later than October 1, 2013 (Plan Year 2014). This current submission reduces the number of potential respondents due to various states electing to rely on the Federally-facilitated Marketplace (FFM). Also, at the time of the original request, the tool was partially paper-based. During the intervening time, we have developed the on-line implementation of the tool and will transition all future applications to that system.

States seeking to establish a Marketplace must build one that meets the requirements set out in Section 1311(d) of the Affordable Care Act and 45 CFR 155.105. In order to ensure that a State seeking approval as a State-based Marketplace, State-based SHOP Marketplace, or State Partnership Marketplace meet all applicable requirements, the Secretary will require a state to submit a Blueprint for approval and to demonstrate operational readiness through virtual or on-site readiness review. *Form Number:* CMS–10416 (OCN: 0938–1172); *Frequency:* Once; *Affected Public:* State, Local, or Tribal governments; *Number of Respondents:* 31; *Number of Responses:* 31; *Total Annual Hours:* 5,552. (For policy questions regarding this collection, contact Sarah Summer 301–492–4443.)

Dated: March 4, 2014.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2014–05000 Filed 3–6–14; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[CFDA Numbers: 93.612, 93.602]**

### Notice for Public Comment on the Adoption of Program Policies and Procedures for the Native Asset Building Initiative, a Joint Funding Opportunity Announcement Between the Administration for Native Americans and the Office of Community Services

**AGENCY:** Administration for Native Americans, ACF, HHS.

**ACTION:** Notice for Public Comment.

**SUMMARY:** Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans (ANA) is required to provide members of the public an opportunity to comment on changes in interpretive rules, general statements of policy, and rules of agency procedure or practice that affect programs, projects, and activities authorized under the NAPA. In accordance with notice requirements of NAPA, ANA herein describes its planned changes to interpretive rules, general statements of policy, and rules of agency procedure or practice as they relate to the Fiscal Year (FY) 2014 Funding Opportunity Announcement (FOA) for the Native Asset Building Initiative, HHS–2014–ACF–ANA–NO–0786 (hereinafter referred to as NABI).

Projects funded under this initiative receive two grant awards from two Administration for Children and Families (ACF) Program Offices—ANA and the Office of Community Services (OCS). Grantees under the NABI program implement economic capacity building projects that are targeted toward increasing the economic stability of low-income individuals and families, through the establishment of Individual Development Accounts (IDAs) and related services that motivate individuals to save, invest, and accumulate assets. NABI is part of a national Assets for Independence (AFI) demonstration project, authorized under the Assets for Independence Act of 1998, to test, demonstrate, and develop knowledge about the impact of IDAs and related services. For additional information about NABI, please see the Health and Human Services (HHS) Grants Forecast at the following link: *http://www.acf.hhs.gov/hhsgrantsforecast/index.cfm?switch=grant.view&gff_grants_forecastInfoID=66481*.

**DATES:** The deadline for receipt of comments is April 7, 2014.

**ADDRESSES:** Comments in response to this notice should be sent via email to Lillian Sparks Robinson, Commissioner, Administration for Native Americans, at *ANACommissioner@acf.hhs.gov*. Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Carmelia Strickland, Director, Division of Program Operations, ANA, (877) 922–9262.

*A. Administrative Policies:* ANA would make the following changes to the Administrative Policies in the NABI FOA.

1. ANA will clarify the conflict of interest standards to ensure they align with the rule at 45 CFR 1336.50(f). This rule authorizes the Office of the Chief Executive of a federally recognized Indian tribal government to be paid salary and expenses with ANA grant funds provided such costs are related to a project funded under ANA FOAs and that the costs exclude any portion of salaries and expenses that are a cost of general government. Given this rule regarding the allowable use of grant funds, we would adopt a limited exception to previously published conflict of interest standards that previously did not include the

regulatory exception applicable to the Office of the Chief Executive of federally recognized Indian tribes.

2. ANA intends to adopt the following policy for the NABI FOA:

ACF encourages all eligible applicants to participate in the Assets for Independence demonstration project; therefore awards made under this FOA will be exempt from the following Administrative Policies regarding limitation of ANA awards: ''Limitation on the Number of Awards under a Single CFDA Number,'' and ''Limitation on the Number of Awards Based on Two Consecutive Funding Cycles.'' (Please see FOA Index for a full statement of these policies).

Since NABI was developed as a special initiative between ANA and OCS to increase Native American participation in the national Asset for Independence demonstration project, ANA also will remove the related disqualification factor titled ''Only One Active Award per CFDA.'' This disqualification factor had been included in the FY 2013 version of the NABI FOA to ensure the ''Limitation on Number of Awards per CDFA Number'' Administrative Policy. The exemption from the Administrative Policy coupled with the removal of the disqualification factor is intended to encourage increased participation in the NABI program.

*B. Federal Evaluation:* ANA intends to include the following language:

ANA and OCS are required by statute to evaluate the impact of their funding. To fulfill the evaluation requirements, ANA and OCS will implement a federally sponsored evaluation strategy to assess the success and impact of approved projects. The federal evaluation strategy will include grantee-level documentation. In accepting a grant award, all grantees will agree to participate fully in the federal evaluation if selected and to follow all evaluation protocols established by ANA and OCS or their designee contractor.

*C. Name Change of a Disqualification Factor:* ANA would change the name of the disqualification factor titled ''Board Documentation'' to ''Assurance of Community Representation on Board of Directors'' in order to further clarify what is being requested of applicants regarding demonstration of community representation. The content of this requirement will not change, and it still will *not* apply to tribes or Alaska Native Villages. All disqualification factors will be in *Section III.3. Other* of the published FOA.

*D. Eligible Applicants:* ANA intends to clarify eligible applicants. Eligible applicants will remain the same as those entities noted in the FY 2013 version of the NABI FOA (HHS–2013–ACF–ANA–NO–0587, available at: *http://www.acf.hhs.gov/grants/open/foa/index.cfm?switch=foa&fon=HHS-2013-ACF-ANA-NO-0587*) and will include Native 501(c)(3) non-profit organizations, federally recognized tribal governments and Alaska Native Villages, Native non-profit organizations designated by the Secretary of the Treasury as Community Development Financial Institutions (CDFIs), and Native non-profit credit unions designated as low-income credit unions by the National Credit Union Administration (NCUA). The bulleted lists of example organizations under each type of applicant will be removed and clarifying language will be added that describes the following eligibility rules: Native non-profits must have 501(c)(3) status with the Internal Revenue Service; tribes and Alaska Native Villages may only apply jointly with a non-profit with 501(c)(3) status; Tribal Colleges may apply as either a non-profit with 501(c)(3) status or jointly with a non-profit with 501(c)(3) status.

*E. Projects Ineligible for Funding:* ANA would revise language in this section to provide clarification on two of the types of projects ANA will not fund under regulations at 45 CFR 1336.33(b), as follows:

1. Projects for which a grantee would provide training and technical assistance to other tribes or Native American organizations to the extent such training or technical assistance is duplicative of ANA-funded training and technical assistance available to tribes and other entities that are eligible to apply for ANA funding. This does not apply to ''train-the-trainer'' capacity building projects.

2. Projects from consortia of tribes that do not include documentation from each participating consortium member specifying their role and support. Projects from consortia must have goals and objectives that will encompass the participating communities. ANA will not fund projects by a consortium of tribes that duplicates activities for which participating member tribes also receive funding from ANA.

*F. Page Limits for NABI Applications:* ANA would change the maximum page limit for applications submitted in response to the FY 2014 NABI FOA from 200 pages to 150 pages. This page limit excludes business plans (if applicable) and mandatory grant forms (Standard Forms and ANA's Objective Work Plan form). The 150-page limit is consistent with ANA's other FY 2014 FOAs. Applications that exceed the page limit will have excess pages removed from consideration during the panel review process.

*G. Two-File Application Upload Requirement:* ANA would exempt applicants from the ACF application two-file upload requirement for electronically submitted applications when responding to all FY 2014 ANA FOAs, including NABI, in order to reduce the technical burden on such applicants and to ensure that lack of technical resources, not otherwise required of applicants, does not unintentionally act to disqualify an applicant, otherwise eligible, from applying under ANA FOAs.

*H. Outcomes Expected for NABI Applications:* ANA intends to emphasize monitoring of outcomes specific to the AFI initiative by requiring applicants to provide annual targets for the following: The number of IDAs opened per savings goal (home ownership, education, and entrepreneurship); the number of participants completing financial education trainings; the number of individuals completing an asset purchase; the amount of non-federal cash contribution deposited in the Project Reserve Fund; and the percentage of the 5-year federal AFI budget that will be drawn down annually. Target numbers for the entire 5-year project period were requested in previous FOAs.

*I. Protection of Sensitive and/or Confidential Informatio*n: ANA intends to add the following application requirement to all FY 2014 FOAs in order to ensure the protection of confidential and/or sensitive information:

If any confidential or sensitive information will be collected during the course of the project, whether from staff (e.g., background investigations) or project participants and/or project beneficiaries, then provide a description of the methods that will be used to ensure that confidential and/or sensitive information is properly handled and safeguarded. Also provide a plan for the disposition of such information at the end of the project period.

*J. ANA Application Evaluation Criteria:*

1. Changes to Criteria: ANA would add three additional criteria to the FOA, titled: Need for Assistance, Objective Work Plan (OWP), and Organizational Capacity. The concept of Need for Assistance was articulated as the Problem Statement and was evaluated under the Outcomes Expected criteria in prior years' FOAs. The OWP and Organizational Capacity were

previously listed and evaluated as part of the Approach section. They will be listed as separate criteria to highlight the critical nature of these elements to project success. Bonus Points that appeared in prior years' FOAs will be removed from the evaluation criteria.

2. Titles and Assigned Weight: ANA would adjust the maximum point values of the evaluation criteria scores to further prioritize elements that are important to project monitoring and success. ANA proposes to use the following criteria values for the FY 2014 NABI FOA:

*Need for Assistance—15 points;*
*Outcomes Expected—10 points;*
*Project Approach—20 points;*
*Organizational Capacity—25 points;*
*Objective Work Plan—20 points;*
*Budget and Budget Justification—10 points.*

3. Scoring Guidance: ANA intends to provide guidance to reviewers to utilize the table below when allocating points for applications in order to ensure consistency and equivalence in scoring between different panels and panel reviewers. ANA would add the following table to all FY 2014 FOAs:

| | |
|---|---|
| Excellent | 93–100 |
| Very Good | 86–92 |
| Good | 78–85 |
| Fair | 70–77 |
| Needs Significant Improvement | 0–69 |

*K. ANA Internal Review of Proposed Projects:* ANA proposes to clarify the language in *Section V.2. Review and Selection Process* of all FY 2014 FOAs to clarify the scope of discretion to be exercised in making funding decisions as follows:

Based on the ranked order of applications, ANA staff will perform an internal review and analysis of the highest ranked applications in order to determine their consistency with the purposes of NAPA, all relevant statutory and regulatory requirements, and the requirements of this FOA. ANA's Commissioner has discretion to make all final funding decisions. In the exercise of such discretion, the Commissioner would consider whether the project:

1. Would further the purpose of this funding opportunity as described in *Section I. Description,* or is likely to be successful or cost effective based on what is submitted for evaluation in response to *Section IV.2. Project Description.*

2. Fails to provide documented commitment of non-federal cash contributions as described in *Section III.2. Cost Sharing or Matching* and *Section IV.2. Project Description, Commitment of Non-Federal Resources.*

3. Allows any one community, or region, to receive a disproportionate share of the funds available for award.

4. Is essentially identical or similar in whole, or in part, to previously funded projects proposed by the same applicant, or activities or projects proposed by a consortium that duplicates activities for which any consortium member also receives funding from ANA.

5. Provides couples or family counseling activities that are medically based.

6. Originated with and/or was designed by consultants who provide a major role for themselves and are not members of the applicant organization, tribe, or village.

7. Contains contingent activities that may impede, or indefinitely delay, the progress of the project.

8. Has the potential to cause unintended harm or that could negatively impact the safety or privacy of individuals.

9. May be used for the purpose of providing loan capital. Federal funds awarded under this FOA may not be used for the purpose of providing loan capital. This is not related to loan capital authorized under Sec. 803A of NAPA [42 U.S.C. 2991b–1(a)(1)] for the purpose of the Hawaiian Revolving Loan fund.

10. Includes human subject research as defined at 45 CFR 45.102(d) and (f).

*L. Reporting:* ANA would change the reporting requirement from quarterly to semi-annual for Objective Progress Reports (OPR) and Financial Status Reports (FSR). Therefore, grantees will be required to submit an OPR and an FSR every 6 months instead of every 3 months. Please note grantees will still be required to submit a Federal Financial Report—Federal Cash Transaction Report to the Division of Payment Management on a quarterly basis.

**Lillian Sparks Robinson,**

*Commissioner, Administration for Native Americans.*

[FR Doc. 2014–04959 Filed 3–6–14; 8:45 am]

**BILLING CODE 4184–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–0191]**

### Advancing Regulatory Science for High Throughput Sequencing Devices for Microbial Identification and Detection of Antimicrobial Resistance Markers

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

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Advancing Regulatory Science for High Throughput Sequencing Devices for Microbial Identification and Detection of Antimicrobial Resistance Markers.'' The purpose of the public workshop is to discuss the clinical and public health applications and performance validation of these devices, the quality criteria for establishing the accuracy of reference databases for regulatory use and ways to streamline clinical trials for microbial identification. This discussion is essential to establish the safety and effectiveness of high throughput sequencing devices when used to test human specimens or clinical isolates for the diagnosis of infectious diseases and detection of antimicrobial resistance markers.

**DATES:** *Date and Time:* The public workshop will be held on April 1, 2014, from 9 a.m. to 4:30 p.m.

*Location:* The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For parking and security information, please visit the following Web site: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

*Contact Person:* Heike Sichtig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5269, Silver Spring, MD 20993–0002, email: *Heike.Sichtig@fda.hhs.gov.*

*Registration:* Registration is free and on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m. on March 25, 2014. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations.

Registrants will receive confirmation once their registration has been accepted. Onsite registration on the day of the public workshop will be provided on a space-available basis beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, email: *susan.monahan@fda.hhs.gov* at least 7 days in advance of the workshop.

To register for the public workshop, please visit FDA's Medical Devices News & Events-Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list). Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. If you are unable to register online, please contact Susan Monahan (301–796–5661, email: *susan.monahan@fda.hhs.gov*). Registration requests should be received by 5 p.m., March 25, 2014.

In advance of the meeting, registered attendees will receive a draft of FDA's proposed concept for the performance evaluation of High Throughput Sequencing Devices for Microbial Identification and Detection of Antimicrobial Resistance Markers. Additional information, including a workshop agenda, will be available at a later date.

**SUPPLEMENTARY INFORMATION:**

## I. Background

High throughput sequencing devices for the diagnosis of infectious diseases, including detection of antimicrobial resistance markers, are a new generation of diagnostic products that have the capability to simultaneously identify and differentiate a large number of microbial pathogens using a single clinical specimen or clinical isolate. These devices have already emerged as a critical tool in many research areas and soon they will become both a fixture in clinical microbiology reference laboratories and a routine part of diagnostic laboratory workflows. Use of this technology requires a process of sample/library preparation, sequencing, and output de-convolution/results interpretation. The identification of the organism or resistance marker is often based on genomic sequence information in comparison to reference databases that were created by the device manufacturer or are otherwise publicly available.

High throughput sequencing devices have the potential to dramatically change clinical microbiology. These diagnostic devices present several advantages, such as identifying potential disease etiology in situations where many different pathogens share a common clinical manifestation without the need for any a priori target specific information to select the appropriate test. However, the processes of selecting the methods used to establish and validate the performance of these devices to make informed clinical and public health decisions pose significant scientific and regulatory challenges.

The purpose of the public workshop is to discuss the implementation of high throughput sequencing devices for the diagnosis of infectious disease. Specifically, the FDA seeks input from clinical laboratories, infectious disease physicians, industry, government, academia, and other stakeholders on the following topics: Clinical applications and public health needs; device performance validation; reference databases; and ways to streamline clinical evaluations/trials for microbial identification. This information is viewed as essential in establishing the safety and effectiveness of high throughput sequencing devices when used for the clinical diagnosis of infectious diseases and markers of antimicrobial resistance from human specimens or clinical isolates.

## II. Workshop Overview

This public workshop will consist of brief presentations providing information to frame the goals of the workshop, and an interactive discussion. The presentations will focus on current and anticipated uses for high throughput sequencing devices, a proposal for the performance evaluation approach preferred by FDA, and information on the criteria for acceptable reference databases. Following the presentations there will be a moderated discussion where the participants will be asked to provide their individual perspectives. The outcome of the meeting will be captured and released as a draft guidance document.

The draft guidance document is expected to be available at a later date. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov.* This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate workshop from the list).

## III. Topics for Input

FDA will seek input on its proposed performance evaluation approach, which will include the following topics:

1. Clinical applications and public health needs: Identify specific applications where high throughput sequencing could be used for diagnosis of infectious diseases and markers of antimicrobial resistance from human specimens or clinical isolates.

2. Device validation: Develop and adapt standards for the microbial genome sequencing process (from sample collection to result reporting), discuss best practices for sample/library preparation, variant identification, genome annotation, output de-convolution/results interpretation, and reporting.

3. Reference databases: Develop quality criteria to establish accurate reference databases, methods for curating, maintaining, and updating these databases.

4. Streamline clinical evaluations/trials for microbial identification: Establish a new comparator paradigm for high throughput sequencing as the reference method to augment or replace existing reference testing methods.

## IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: February 28, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014–04940 Filed 3–6–14; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–0001]**

### Cardiovascular and Renal Drugs 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:* Cardiovascular and Renal Drugs 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 March 27, 2014, from 8 a.m. to 5 p.m. This meeting is a reschedule of a postponed meeting announced in the **Federal Register** of January 8, 2014 (79 FR 1384), originally scheduled for February 13, 2014.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 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.

*Contact Person for More Information:* Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* 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:* The committee will discuss biologics license application (BLA) 125468, serelaxin injection, submitted by Novartis Pharmaceuticals Corp., as a treatment to improve the symptoms of acute heart failure through reduction of the rate of worsening of heart failure.

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 March 24, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. 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 March 21, 2014. 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 March 24, 2014.

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 Kristina Toliver 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: March 4, 2014.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2014–04986 Filed 3–6–14; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Nurse Education and Practice (NACNEP).

*Date and Time:* March 21, 2014, 9:30 a.m.–5:00 p.m. Eastern Standard Time.

*Place:* Webinar Format.

*Status:* This meeting will be open to the public.

*Purpose:* The purpose of this meeting is to identify the key issues facing public health nursing and population health, and to formulate policy recommendations for Congress and the Secretary to ensure the nursing workforce is ready to meet these challenges. The objectives of the meeting are: (1) To articulate the key challenges facing public health nursing and population health; (2) to develop goals and priorities for Council action to address these challenges; and (3) to develop recommendations on the activities, initiatives, and partnerships that are critical to advancing twenty-first century public health nurse education and practice models needed to promote the health of the public. This meeting will form the basis for NACNEP's mandated *Twelfth Annual Report to the Secretary of the U.S. Department of Health and Human Services and Congress.* The meeting will include presentations and discussion focused around the purpose and objectives of this meeting.

*Agenda:* A tentative agenda will be available on the NACNEP Web site 10

days in advance of the meeting with a final agenda posted 1 day prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Public participants may submit written statements in advance of the scheduled meeting. If you would like to provide oral public comment during the meeting, please address them to the Designated Federal Official (DFO), CDR Serina Hunter-Thomas, at *shunter-thomas@hrsa.gov.* Public comment will be limited to 3 minutes per speaker.

**SUPPLEMENTARY INFORMATION:** Further information regarding NACNEP, including the roster of members, Reports to Congress, and minutes from previous meetings is available at the following Web site: *http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/index.html.* In addition, please be advised that committee members are given copies of all written statements submitted from the public. Any further public participation will be solely at the discretion of the Chair, with approval of the DFO in attendance. Registration through the DFO for the public comment session is required. Any member of the public who wishes to have printed materials distributed to the Council for this scheduled meeting should submit material to the DFO no later than 12:00 p.m. EST March 18, 2014.

Members of the public and interested parties should request to participate in the meeting by contacting our Staff Assistant, Jeanne Brown, to obtain access information. Access will be granted upon request only and will be granted on a first-come, first-served basis. Space is limited.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Brown, Staff Assistant, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–61, 5600 Fishers Lane, Rockville, Maryland 20857; email *reachDN@hrsa.gov;* telephone (301) 443–5688.

Dated: February 28, 2014.

**Jackie Painter,**

*Deputy Director, Division of Policy and Information Coordination.*

[FR Doc. 2014–04957 Filed 3–6–14; 8:45 am]

**BILLING CODE 4165–15–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; Intergenerational Processes.

*Date:* March 31, 2014.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute On Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 3, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–04941 Filed 3–6–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

**SUMMARY:** This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. The meeting is open to the public as indicated below, and preregistration is requested for both attendance and oral comment and required to access the webcast. Parts of the meeting will be closed as indicated on the agenda. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/165*.

**DATES:**

*Meeting:* April 16–18, 2014, begins at 11:00 a.m. Eastern Daylight Time (EDT) on April 16, at 8:30 a.m. on April 17 and 18, and continues each day until adjournment. Written Public Comment Submissions: Deadline is April 2, 2014.

*Preregistration for Meeting and/or Oral Comments:* Deadline is April 9, 2014. Registration to view the meeting via the webcast is required.

**ADDRESSES:**

*Meeting Location:* Rodbell Auditorium, Rall Building, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Meeting Web Page:* The preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/165*.

*Webcast:* Webcasting of the meeting will start at 2:00 p.m. on April 17; the URL will be provided to those who preregister for viewing.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lori White, Designated Federal Officer for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 919–541–9834, Fax: 301–480–3272, Email: *whiteld@niehs.nih.gov*. Hand Deliver/Courier address: 530 Davis Drive, Room K2124, Morrisville, NC 27560.

**SUPPLEMENTARY INFORMATION:**

*Meeting and Registration:* Parts of the meeting are open to the public as indicated on the agenda with time scheduled for oral public comments; attendance at the meeting is limited only by the space available. Parts of the meeting are closed to the public as indicated on the agenda in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NIEHS, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The BSC will provide input to the NTP on programmatic activities and issues. A preliminary agenda, roster of BSC members, background materials, public comments, and any additional

information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site.

The public may attend the meeting in person or view the webcast of the open sessions, which begin at 2 p.m. on April 17, 2014. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to provide oral comments (see below) are encouraged to preregister online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by April 9, 2014, to facilitate planning for the meeting. Individuals interested in this meeting are encouraged to access the Web site to stay abreast of the most current information regarding the meeting. Visitor and security information for those attending in-person is available at *niehs.nih.gov/about/visiting/index.cfm*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. White at phone: (919) 541–9834 or email: *whiteld@niehs.nih.gov*. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

*Request for Comments:* Written comments submitted in response to this notice should be received by April 2, 2014. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, email, and sponsoring organization (if any) with the document.

Time is allotted during the open portion of the meeting for the public to present oral comments to the BSC on the agenda topics. Public comments can be presented in-person at the meeting at NIEHS or by teleconference line. There are 50 lines for this call; availability is on a first-come, first-served basis. The available lines will be open from 2:00 p.m. on April 17 and from 8:30 a.m. on April 18 until adjournment, although the BSC will receive public comments only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. Each speaker is allotted at least 7 minutes, which if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments should register on the BSC meeting Web site by April 9, 2014, indicate whether they will present comments in-person or via the teleconference line, and indicate the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. On-site registration for oral comments will also be available on the meeting day, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement and/or PowerPoint slides to the Designated Federal Officer by April 9, 2014. Written statements can supplement and may expand upon the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

*Background Information on the BSC:* The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended. The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: February 28, 2014.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

[FR Doc. 2014–04942 Filed 3–6–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified 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 HHS-certified laboratories and IITFs 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 IITFs 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 IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified 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 HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**HHS-Certified Instrumented Initial Testing Facilities**

Gamma-Dynacare Medical Laboratories, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190.

**HHS-Certified 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, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

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, 509–755–8991/800–541–7891 x7.

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 x 1276.

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.

**Summer King,**

*Statistician.*

[FR Doc. 2014–04958 Filed 3–6–14; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet April 2, 2014, 9:30 a.m.–5:00 p.m.

The meeting is open to the public and will include a discussion of the Center's current administrative, legislative, and program developments. Public comments are welcome. To attend on-site, or request special accommodations for persons with disabilities, please register at SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the Council's Designated Federal Officer, Ms. Cynthia Graham, (see contact information below).

Individuals interested in making oral comments or obtaining the meeting number and passcode are encouraged to notify Ms.Graham, on or before March 24. Substantive program information, a summary of the meeting and a roster of Council members may be obtained 30 days following the meeting by accessing the SAMHSA Committee Web site at *http://nac.samhsa.gov/CSATcouncil/index.aspx* or contacting Ms. Graham.

*Committee Name:* Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment National Advisory Council.

*Date/Time/Type:* April 2, 2014, 9:30 a.m.–5:00 p.m. (OPEN)

*Place:* SAMHSA Building, Sugarloaf Conference Room, 1 Choke Cherry, Rockville, MD 20857.

*Contact:* Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov.*

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05004 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on April 2, 2014.

The Council was established to advise the Secretary, Department of Health and Human Services (HHS); the Administrator, SAMHSA; and Center Director, CSAP concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities.

The meeting will be open to the public and include discussion of prevention in the context of primary care, SAMHSA's Strategic Initiative on the Prevention of Substance Abuse and Mental Illness, communications, and CSAP program and budget developments.

To attend the public portion of the meeting onsite, submit written or brief oral comments, request special accommodations for persons with disabilities, or participate via Webcast, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAP Council's Designated Federal Officer (see contact information below).

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained either by accessing the SAMHSA Committee's Web site after the meeting, *http://nac.samhsa.gov/,* or by contacting Matthew J. Aumen. A transcript of the open portion of the meeting will also be available on the SAMHSA Web site after the meeting.

*Committee Name:* Substance Abuse and Mental Health Services, Administration, Center for Substance Abuse Prevention, National Advisory Council.

*Date/Time/Type:* April 2, 2014, from 10:00 a.m. to 4:00 p.m. EDT: (OPEN)

*Place:* SAMHSA, 1 Choke Cherry Road, Rock Creek Conference Room (lobby level), Rockville, MD 20857.

*Contact:* Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 1 Choke Cherry Road, Rockville, MD 20857, Telephone: 240–276–2419, Fax: 240–276–2430, Email: *matthew.aumen@samhsa.hhs.gov.*

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05003 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### National Advisory Council; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (NAC) on April 4, 2014.

The meeting will include discussions of SAMHSA's Leadership Role in an Integrated Health Environment, SAMHSA and Military Families, and SAMHSA's Communication Strategy.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the Sugarloaf Conference Room. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. The meeting will be available via teleconference at 888–390–0854, Participant passcode: SAMHSA. To attend on site, obtain the call-in number and access code, submit written

or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with SAMHSA's Designated Federal Officer, Ms. Geretta Wood (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/NACcouncil/meetings.aspx*, or by contacting Ms. Wood. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

*Committee Name:* SAMHSA's National Advisory Council.

*Date/Time/Type:* Friday, April 4, 2014 from 9 a.m. to 1:30 EDT: OPEN.

*Place:* SAMHSA, 1 Choke Cherry Road, SAMHSA Sugarloaf Conference Room, Rockville, Maryland 20857.

*Contact:* Geretta Wood, Committee Management Officer and Designated Federal Official of the SAMHSA National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2252, and Email: *geretta.wood@samhsa.hhs.gov*.

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05006 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on April 2, 2014. The meeting is open to the public. It will include an update from the SAMHSA Women's Coordinating Committee and discussions of Behavioral Health and Primary Care Integration and other ACWS related topics.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857, in the VTC Room. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference. The meeting will be available via teleconference at 800–593–7178, Participant passcode: SAMHSA. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/Meetings Registration.aspx,* or communicate with SAMHSA's Acting Designated Federal Officer, Ms. Nadine Benton (see contact information below).Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site *https://nac.samhsa.gov/Women Services/index.aspx,* or by contacting Ms. Benton. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

*Committee Name:* SAMHSA's Advisory Committee for Women's Services.

*Date/Time/Type:* Wednesday, April 2, 2014, from 9 a.m. to 5:15 EDT: OPEN.

*Place:* SAMHSA, 1 Choke Cherry Road, SAMHSA VTC Room, Rockville, Maryland 20857. Contact: Nadine Benton, Acting Designated Federal Officer, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–0127, Fax: (240) 276–2252 and Email: *nadine.benton@samhsa.hhs.gov*.

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05001 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration (SAMHSA)

### Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on April 3, 2014, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The April 3 combined meeting will include a report from the SAMHSA Administrator, an update on SAMHSA's Budget, and discussions related to the impact of behavioral health and healthcare integration on SAMHSA, a report from the Youth Members of the Councils, an update of SAMHSA's current and future strategic initiatives and SAMHSA's internal operating strategies.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the 1st floor Conference Rooms. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

The meeting may be accessed via teleconference at 1–866–652–5200, Participant passcode: SAMHSA. To

attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, Ms. Geretta Wood (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx,* or by contacting Ms. Wood. The transcript for the meeting will be available on the SAMHSA Committees' Web site within three weeks after the meeting.

*Committee Names:* Substance Abuse and Mental Health Services Administration National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, SAMHSA's Advisory Committee for Women's Services, SAMHSA Tribal Technical Advisory Committee.

*Date/Time/Type:* Thursday, April 3, 2014 from 8:30 a.m. to 5:00 EDT: OPEN.

*Place:* SAMHSA, 1 Choke Cherry Road, SAMHSA 1st floor Conference Rooms, Rockville, Maryland 20857.

*Contact:* Geretta Wood, Committee Management Officer and Designated Federal Official of the SAMHSA National Advisory Council and SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2252, and Email: *geretta.wood@samhsa.hhs.gov.*

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05005 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) National Advisory Council will meet April 2, 2014, 9:00 a.m. to 4:30 p.m.

The meeting will be open to the public from 9:00 a.m. to 4:30 p.m. as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(9)(b) and 5 U.S.C. App. 2, Section 10(d). The meeting will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, by accessing the SAMHSA Committee Web site at *https://nac.samhsa.gov/CMHScouncil/index.aspx*, or by contacting the CMHS National Advisory Council Designated Federal Official, Ms. Deborah DeMasse-Snell (see contact information below).

*Committee Name:* SAMHSA's Center for Mental Health Services National Advisory Council.

*Date/Time/Type:* April 2, 2014, 9:00 a.m.–4:30 p.m. OPEN.

*Place:* SAMHSA Building, 1 Choke Cherry Road, Great Falls Room, Rockville, Maryland 20857.

*Contact:* Deborah DeMasse-Snell M.A. (Than), Designated Federal Official, SAMHSA CMHS National Advisory Council, 1 Choke Cherry Road, Room 6–1084, Rockville, Maryland 20857, Telephone: (240) 276–1861, Fax: (240) 276–1830, Email: *Deborah.DeMasse-Snell@samhsa.hhs.gov.*

**Cathy J. Friedman,**

*Public Health Analyst, SAMHSA.*

[FR Doc. 2014–05002 Filed 3–6–14; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5750–N–10]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, Room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other

Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *Army:* Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *Health And Human Services:* Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, MS–4262, 1849 C Street, Washington, DC, 20240, (202) 513–0795; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: February 27, 2014.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/07/2014**

**Suitable/Available Properties**

*Building*

Alabama

40123
Fort Rucker
Fort Rucker AL 36362
Landholding Agency: Army
Property Number: 21201410011
Status: Unutilized
Comments: off-site removal only; 480 sq. ft.; 20+ yrs.-old; extensive termite & water damage; secured area; contact Army for accessibility/removal requirements.

4 Buildings
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201410026
Status: Unutilized
Directions: 3535 (150 sq. ft.); 3538 (48 sq. ft.); 4637 (2,095 sq. ft.); 7330 (75 sq. ft.)
Comments: off-site removal only; no future agency need; repairs needed; secured area; contact Army for more information.

Arkansas

Tract 12–113—Hebert Bernard House
102 Groinger Dr.
Hot Springs AR 71901
Landholding Agency: Interior
Property Number: 61201410004
Status: Excess
Comments: off-site removal only; 1,269 sq. ft.; residential; severe deterioration; structurally unsound; contact Interior for more info.

California

2 Buildings
Camp Roberts MTC
Camp Roberts CA 93451
Landholding Agency: Army
Property Number: 21201410024
Status: Excess
Directions: 14102 (864 sq. ft.); 14801 (200 sq. ft.)
Comments: off-site removal only; 72+ yrs.-old; secured area; contact Army for accessibility/removal requirements.

7 Buildings
Fort Irwin
Fort Irwin CA 92310
Landholding Agency: Army
Property Number: 21201410027
Status: Unutilized
Directions: 359 (1,458 sq. ft.); 806 (5,328 sq. ft.); 807 (3,956 sq. ft.); 865 (2,928 sq. ft.); 1034 (2,160 sq. ft.); 1323 (3,664 sq. ft.); 9032 (6,038 sq. ft.)
Comments: off-site removal only; dissemble required; no future agency need; repairs needed; contamination; secured area; contact Army for more information.

Georgia

Building 1157
Hunter Army Airfield
Hunter Army Airfield GA 31409
Landholding Agency: Army
Property Number: 21201410033
Status: Excess
Comments: off-site removal only; 5,809 sq. ft.; poor conditions; secured area; gov't escort required; contact Army for more info.

Hawaii

00038
Pohakuloa Training Area
Hilo HI 96720
Landholding Agency: Army
Property Number: 21201410007
Status: Unutilized
Comments: off-site removal only; 102 sq. ft.; storage; 49+ yrs.-old; poor conditions; contact Army for more information.

Building 6004
Marine Corps Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201410005
Status: Excess
Comments: off-site removal only; disassembly required; 3,880 sq. ft.; storage/shop; 10+ yrs.-old; metal siding & roofing is heavily corroded; contact Navy for more information.

Illinois

Village Water Facility
Fermi National Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201410006
Status: Excess
Comments: off-site removal only; 1,257 sq. ft.; 53+ yrs.-old; storage; repairs needed; secured area; contact Energy for accessibility/removal requirements.

Trailer 159
Fermi National Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201410007
Status: Excess
Comments: off-site removal only; 980 sq. ft.; 23+ yrs.-olds; repairs needed; secured area; contact Energy for accessibility/removal requirements.

North Carolina

Greenville Site A Transmitting Station
1000 Cherry Run Rd.
Greenville NC 27834
Landholding Agency: GSA
Property Number: 54201410008
Status: Excess
GSA Number: 4–Z–NC–0753
Directions: Landholding Agency: Broadcasting Board of Governors; Disposal: GSA; previously reported under 54201210002
Comments: main bldg. 54,318 sq. ft.; 40 transmitter antennas & 160 towers on the site; 12+ months vacant; fair conditions; asbestos/lead-based paint; environ. conditions; contact GSA for more info.

Texas

5 Buildings
Red River Army Depot
Texarkana TX 75507
Landholding Agency: Army

Property Number: 21201410025
Status: Excess
Directions: 467 (800 sq. ft.); 00676 (283 sq. ft.); 02091 (864 sq. ft.); 02257 (864 sq. ft.); 02325 (864 sq. ft.)
Comments: off-site removal only; removal may be difficult due to conditions/structure type; poor conditions; asbestos; secured area; contact Army for more information.

2 Buildings
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21201410034
Status: Excess
Directions: 90084 (13,125 sq. ft.); 90000 (217 sq. ft.)
Comments: off-site removal only; removal difficult due to structure type; contamination; secured area; contact Army for more info.

Building 4917
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21201410035
Status: Excess
Comments: off-site removal only; 404 sq. ft.; removal may be difficult due to structure type; secured area; contact Army for more info.

Washington

LK WEN RS BH TRLR
(1149.005511) 07672 00
Leavenworth WA 98826
Landholding Agency: Agriculture
Property Number: 15201410006
Status: Unutilized
Comments: 720 sq. ft.; residential; 38+ yrs.-old; water damaged due to broken water line; contact Agriculture for more information.

Liberty Airbase Trailer
(2131.005511) 07672 00
Liberty WA 98922
Landholding Agency: Agriculture
Property Number: 15201410007
Status: Unutilized
Comments: 320 sq. ft.; storage; 38+ yrs.-old; damaged due to break-ins; contact Agriculture for more information.

Wisconsin

06250
Fort McCoy
Fort McCoy WI 54656
Landholding Agency: Army
Property Number: 21201410013
Status: Unutilized
Comments: off-site removal only; no future agency need; 341 sq. ft.; 38+ yrs.-old; fair conditions; possible lead based paint; secured area; contact Army for more info.

*Land*

Montana

Turner Lots 7–12
Park Street
Turner MT 59542
Landholding Agency: GSA
Property Number: 54201410003
Status: Excess
GSA Number: 7–G–MT–0635
Comments: .96 aces; vacant; undeveloped; contact GSA for more information.

South Carolina

Marine Corps Reserve Training Center
2517 Vector Ave.
Goose Creek SC 29406
Landholding Agency: GSA
Property Number: 54201410009
Status: Excess
GSA Number: 4–N–SC–0630–AA
Directions: Landholding Agency: Navy; Disposal Agency: GSA
Comments: 5.59 acres; contact GSA for more information.

South Dakota

Burke Radio Tower Site
290 St.
Burke SD 57523
Landholding Agency: GSA
Property Number: 54201410004
Status: Excess
GSA Number: 7–D–SD–0540
Directions: Disposal: GSA; Landholding: COE
Comments: 2.48 acres; vacant; contact GSA for more information.

**Suitable/Unavailable Properties**

*Building*

California

00806
Fort Hunter Liggett
Fort Hunter Liggett CA 93928
Landholding Agency: Army
Property Number: 21201410017
Status: Unutilized
Comments: off-site removal only; no future agency need; 1,600 sq. ft.; 60+ months vacant; poor conditions; exposed to elements/wildlife; secured area; contact Army for more info.

Building 573
Fort Irwin
Ft. Irwin CA 92310
Landholding Agency: Army
Property Number: 21201410037
Status: Unutilized
Comments: off-site removal only; 760 sq. ft.; disassembly maybe required; no future agency need; repairs needed; contamination; secured area; contact Army for more info.

Georgia

1096
Fort Stewart
Ft. Stewart GA 31314
Landholding Agency: Army
Property Number: 21201410001
Status: Excess
Comments: off-site removal only; due to structure type relocation may be difficult; poor conditions; 7,643 sq. ft.; secured area; contact Army for more information.

3 Buildings
Hunter Army Airfield
Hunter Army Airfield GA 31409
Landholding Agency: Army
Property Number: 21201410002
Status: Excess
Directions: 1126 (1,196 sq.); 1127 (1,196 sq. ft.); 1129 (5,376 sq. ft.)
Comments: off-site removal only; dissemble required; poor conditions; secured area; gov't escort required; contact Army for more information.

1124
Hunter Army Airfield
Hunter Army Airfield GA 31409
Landholding Agency: Army
Property Number: 21201410010
Status: Excess
Comments: off-site removal only; 1,188 sq. ft.; due to structure type relocation may be difficult; poor conditions; secured area; contact Army for more info.

Texas

8 Buildings
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21201410020
Status: Excess
Directions: 94030 (2,567 sq. ft.); 90083 (150 sq. ft.); 26011 (4,789 sq. ft.); 26010 (4,735 sq. ft.); 26009 (4,735 sq. ft.); 26008 (4,735 sq. ft.); 26007 (4,735 sq. ft.); 08640 (3,735 sq. ft.)
Comments: off-site removal only; removal difficult due to structure type; contamination; secured area; contact Army for more information.

9 Buildings
Fort Hood
Fort Hood TX 96544
Landholding Agency: Army
Property Number: 21201410021
Status: Excess
Directions: 04481 (48 sq. ft.); 4292 (1,830 sq. ft.); 4291 (6,400 sq. ft.); 04290 (674 sq. ft.); 4283 (8,940 sq. ft.); 4281 (2,000 sq. ft.); 04273 (687 sq. ft.); 04206 (651 sq. ft.); 04203 (2,196 sq. ft.)
Comments: off-site removal only; removal may be difficult due to structure type; secured area; contact Army for more information.

8 Buildings
Fort Hood
Fort Hood TX 76544
Landholding Agency: Army
Property Number: 21201410023
Status: Excess
Directions: 07035 (1,702 sq. ft.); 7008 (288 sq. ft.); 6987 (192 sq. ft.); 04643 (4,017 sq. ft.); 04642 (4,017 sq. ft.); 04619 (4,103 sq. ft.); 04496 (284 sq. ft.); 04495 (347 sq. ft.)
Comments: off-site removal only; removal may be difficult due to structure type; secured area; contact Army for more information.

8 Buildings
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21201410028
Status: Excess
Directions: 04163, 04165, 51015, 51016, 51017, 51018, 51019, 51020
Comments: off-site removal only; sq. ft. varies; secured area; contact Army for specific property and/or accessibility/removal requirements.

Washington

03215
Joint Base Lewis McChord
JBLM WA 98433
Landholding Agency: Army
Property Number: 21201410008
Status: Underutilized

Comments: off-site removal only; no future agency need; due to age/structure relocation may be difficult; 33,460 sq. ft.; 61+ yrs.-old; barracks; significant renovations; secured area; contact Army.

7 Buildings
Joint Base Lewis McChord
JBLM WA 98433
Landholding Agency: Army
Property Number: 21201410016
Status: Underutilized
Directions: 03216 (33,460 sq. ft.); 03218 (33,460 sq. ft.); 3219 (33,460 sq. ft.); 03222 (33,460 sq. ft.); 03224 (33,460 sq. ft.); 03417 (40,385 sq. ft.); 03418 (40,385 sq. ft.)
Comments: off-site removal only; no future agency need; due to age/structure type removal may be difficult; barracks; significant repairs needed; contact Army for more info.

**Unsuitable Properties**

*Building*

Massachusetts

Tract 21–4979; Maguire House
225 Ridgeway Dr.
Wellfleet MA 02267
Landholding Agency: Interior
Property Number: 61201410005
Status: Excess
Comments: documented Deficiencies: structurally unsound; partially collapsed; collapsed ceilings.
Reasons: Extensive deterioration

Ohio

2 Buildings
Ridge/Tusculum Ave.
Cincinnati OH 45213
Landholding Agency: HHS
Property Number: 57201410001
Status: Underutilized
Directions: 2, 6
Comments: w/in CDC secured campus; public access denied and no alternative to gain access w/out compromising national security.
Reasons: Secured Area

Pennsylvania

00026
Tobyhanna Army Depot
Tobyhanna PA 18466
Landholding Agency: Army
Property Number: 21201410036
Status: Underutilized
Comments: public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

4 Buildings
Cochrans Mills Rd.
Pittsburgh PA 15236
Landholding Agency: HHS
Property Number: 57201410002
Status: Underutilized
Directions: 3, 101, 140, 145
Comments: w/in CDC secured campus; public access denied and no alternative to gain access w/out compromising national security.
Reasons: Secured Area

10 Buildings
Cochrans Mills Rd.
Pittsburgh PA 15236
Landholding Agency: HHS
Property Number: 57201410003
Status: Unutilized
Directions: 115, 221, 227, 118, 223, 233, 224, 225, 206, 226
Comments: w/in CDC secured area; public access denied and no alternative to gain access w/out compromising national security.
Reasons: Secured Area

8 Buildings
NAS
Mechanicsburg PA
Landholding Agency: Navy
Property Number: 77201410002
Status: Excess
Directions: 215, 304, 406, 506, 507, 508, 509, 510
Comments: public access denied and no alternative to gain access w/out compromising national security.
Reasons: Secured Area

Building 202
Naval Support Activity
Mechanicsburg PA
Landholding Agency: Navy
Property Number: 77201410004
Status: Excess
Comments: public access denied and no alternative method to gain access w/out compromising w/out compromising national security.
Reasons: Secured Area

Tennessee

9 Bldgs.
Holston Army Ammo Plant
Kingsport TN 37660
Landholding Agency: Army
Property Number: 21201030021
Status: Unutilized
Directions: 249, 252, 253, 254, 255, 256, 302B, 315, 331
Comments: public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Virginia

Building No. 540
Joint Expeditionary Base Little Creek
VA Beach VA 23459
Landholding Agency: Navy
Property Number: 77201410010
Status: Unutilized
Comments: public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Washington

Building 523
1400 Farragut Ave.
Bremerton WA 98314
Landholding Agency: Navy
Property Number: 77201410008
Status: Unutilized
Comments: public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

3 Buildings
1400 Farragut Ave.
Bremerton WA 98314
Landholding Agency: Navy
Property Number: 77201410009
Status: Underutilized
Directions: 461, 480, 500
Comments: public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

*Land*

Minnesota

Township 69; Tract 50–107
Linsten Cabin
Voyageurs National Park
Kabetogama Lake MN
Landholding Agency: Interior
Property Number: 61201410006
Status: Excess
Comments: property located on a small island & only accessible by boat.
Reasons: Not accessible by road, Isolated area

[FR Doc. 2014–04777 Filed 3–6–14; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]**

### Exxon Valdez Oil Spill Public Advisory Committee

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

**ACTION:** Call for nominations.

**SUMMARY:** The *Exxon Valdez* Oil Spill Trustee Council is soliciting nominations for the Public Advisory Committee, which advises the Trustee Council on decisions related to the planning, evaluation, funds allocation, and conduct of injury assessment and restoration activities related to the T/V *Exxon Valdez* oil spill of March 1989. Public Advisory Committee members will be selected by the Secretary of the Interior to serve a 24-month term, which will begin on October 1, 2014.

**DATES:** All nominations must be received on or before the close of business on May 15, 2014.

**ADDRESSES:** A complete nomination package should be submitted by hard copy to Elise Hsieh, Executive Director, *Exxon Valdez* Oil Spill Trustee Council, 4210 University Drive, Anchorage, Alaska 99508–4650, or via email at *elise.hsieh@alaska.gov.*

**FOR FURTHER INFORMATION CONTACT:** Questions should be directed to Cherri Womac, *Exxon Valdez* Oil Spill Trustee Council, 4210 University Drive, Anchorage, Alaska 99508–4650, 907–265–9339 or 800–478–7745; or Pamela Bergmann, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska 99501–5126, 907–271–5011.

**SUPPLEMENTARY INFORMATION:** The *Exxon Valdez* Oil Spill Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Committee was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resource damage recoveries obtained by the government.

The Trustee Council consists of representatives of the Department of the Interior, Department of Agriculture, National Oceanic and Atmospheric Administration, Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, and Alaska Department of Law. Appointment to the Public Advisory Council will be made by the Secretary of the Interior.

The Public Advisory Committee consists of 10 members to reflect balanced representation from each of the following principal interests: Aquaculturist/mariculturist, commercial tourism business person, conservationist/environmentalist, recreation user, subsistence user, commercial fisher, public-at-large, native landowner, sport hunter/fisher, and scientist/technologist.

Nominations for membership may be submitted by any source.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Public Advisory Committee and permit the Department of the Interior to contact a potential member.

Individuals who are currently federally registered lobbyists are ineligible to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 2014–04985 Filed 3–6–14; 8:45 am]

**BILLING CODE 4310–RG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

### Geological and Geophysical Exploration (G&G) on the Mid- and South Atlantic Outer Continental Shelf (OCS)

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of Availability (NOA) of the Final Programmatic Environmental Impact Statement (EIS) for proposed G&G Activities on the Mid- and South Atlantic OCS.

**SUMMARY:** Consistent with the regulations implementing the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*), BOEM has prepared a Final Programmatic EIS to describe and evaluate the potential environmental impacts associated with reasonably foreseeable G&G survey activities in Federal waters overlying the Mid- and South Atlantic OCS, as well as potentially interconnected or interrelated activities in adjacent State waters, as described in the Supplemental Information section below. These activities include, but are not limited to, seismic surveys (deep penetration and high-resolution geophysical), electromagnetic surveys, geological and geochemical sampling, and remote sensing surveys. The Final Programmatic EIS covers reasonably foreseeable G&G activities associated with the three program areas managed by BOEM on the OCS (i.e., oil and gas exploration and development, renewable energy, and marine minerals). The Final Programmatic EIS also evaluates mitigating measures to reduce potential impacts of G&G activities on marine resources, such as sound impacts to marine species and bottom-disturbance impacts on benthic communities and cultural resources.

**DATES:** Comments should be submitted no later than April 7, 2014.

**ADDRESSES:** Comments may be submitted in one of the following three ways:

1. In written form enclosed in an envelope labeled ''Comments on the Final Programmatic EIS for the Mid- and South Atlantic'' and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394;

2. Electronically to BOEM's email address: *ggeis@boem.gov;* or

3. Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for ''Geological and Geophysical Activities in Mid and South Atlantic'' (**Note:** It is important to include the quotation marks in your search terms.) Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit''.

**FOR FURTHER INFORMATION CONTACT:** For more information on the Final Programmatic EIS, you may contact Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by email at *ggeis@boem.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

**SUPPLEMENTARY INFORMATION:** The Programmatic EIS was prepared to analyze potential environmental impacts from multiple G&G activities in the OCS Mid- and South Atlantic Planning Areas, and interconnected or interrelated activities in adjacent State waters. Development of this Programmatic EIS was also directed under the Conference Report accompanying the FY 2010 Department of the Interior, Environment and Related Agencies Appropriations Act (Pub. L. 111–88).

The Area of Interest (AOI), also known as the affected environment or area of potential effects, for the Programmatic EIS includes U.S. Atlantic waters and submerged lands from the mouth of Delaware Bay to just south of Cape Canaveral, Florida, and from the shoreline to 350 nautical miles from shore. While G&G activities in State waters are not within the jurisdiction of BOEM, the AOI also encompasses adjacent State waters (excluding estuaries) because related G&G activities could extend into State waters or because G&G activities in waters overlying the OCS could impact resources in or migrating through adjacent State waters, e.g. through the introduction of acoustic energy into those waters. The activity scenario and associated impact assessment contained in the Final Programmatic EIS extend to 2020.

The Draft Programmatic EIS was published on March 30, 2012 and the public comment period closed on July 2, 2012. BOEM received over 55,000 comment submissions from federal, state and local governmental organizations, non-governmental organizations, industry and private

citizens electronically and via hard copy. These comments were considered and evaluated in preparing the Final Programmatic EIS. Within the Final Programmatic EIS, BOEM presents the baseline conditions, analyzes reasonably foreseeable impacts to marine resources and, where applicable, identifies and analyzes potential mitigation and monitoring measures to avoid, reduce, or minimize potential impacts. It also establishes a framework for future environmental analyses of site-specific activities before BOEM authorizes any individual permits for those activities.

The Final Programmatic EIS identifies BOEM's Preferred Alternative which provides programmatic-level mitigation, monitoring and reporting requirements meant to reduce the potential for adverse impacts to Mid- and South Atlantic resources from reasonably foreseeable G&G activities across all three BOEM program areas. It also includes an adaptive management strategy that, through site-specific NEPA analysis, will incorporate new information, establish additional measures and/or adjust existing measures based on monitoring results.

Please note that the Final Programmatic EIS does not address the potential environmental effects of oil and gas leasing, development, or production in the Mid- and South Atlantic. BOEM has not proposed oil and gas leasing, development or production in the Mid- and South Atlantic at this time, and additional environmental analyses would be necessary prior to proceeding with any such activities.

*Final Programmatic EIS Availability:* In keeping with the Department of the Interior's mission to protect natural resources and to limit costs while ensuring availability of the document to the public, BOEM will primarily distribute digital copies of the Final Programmatic EIS on compact discs. However, BOEM has printed and will be distributing a limited number of paper copies. If you require a paper copy, BOEM will provide one upon request if copies are still available.

1. You may request a hard copy or compact disc of the Final Programmatic EIS from the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (GM 335A), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF (4853)).

2. You may download or view the Final Programmatic EIS on BOEM's project Web site at *http://.boem.gov/and-Gas-Energy-Program//.aspx* or on BOEM's EIS Web site at *http://www.boem.gov/nepaprocess/.*

Several libraries along the Atlantic Coast have been sent copies of the Final Programmatic EIS. To find out which libraries have copies of the Final Programmatic EIS for review, you may contact BOEM's Public Information Office or visit BOEM's Internet Web site at *http://www.boem.gov/nepaprocess/.*

*Public Disclosure of Names and Addresses:* Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Authority:** This NOA is published pursuant to the regulations (40 CFR part 1503) implementing the provisions of NEPA, as amended (42 U.S.C. 4321 *et seq.*).

Dated: January 10, 2014.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2014–05046 Filed 3–6–14; 8:45 am]

BILLING CODE 4310–MR–P

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Hemostatic Products and Components Thereof; DN 3003;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS,*[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed behalf of Baxter International Inc., Baxter Healthcare Corporation, and Baxter Healthcare SA, on February 28, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hemostatic products and components thereof. The complaint name as respondents Johnson and Johnson Inc. Brunswick, NJ, Ethicon, Inc., Somerville, NJ, Ferrosan Medical Devices A/S, Denmark, Packaging Coordinators, Inc., Philadelphia, PA. The complainant requests that the Commission issue a permanent limited exclusion order, permanent cease and desist orders, and impose a bond during any Presidential Review period.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3003'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 28, 2014.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2014–04945 Filed 3–6–14; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA #390P]**

### Controlled Substances: 2014 Proposed Aggregate Production Quota for Four Temporarily Controlled Synthetic Cannabinoids

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of a proposed 2014 aggregate production quota for four synthetic cannabinoids.

**SUMMARY:** Four synthetic cannabinoids: quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate (PB-22; QUPIC); quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22); *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (AB-FUBINACA); and *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (ADB-PINACA) were temporarily placed in schedule I of the Controlled Substances Act (CSA) by a final order published by the DEA on February 10, 2014 (79 FR 7577). This means that any manufacturer that wishes to manufacture PB-22, 5F-PB-22, AB-FUBINACA, or ADB-PINACA after February 10, 2014, must be registered with the DEA and have obtained a manufacturing quota for PB-22, 5F-PB-22, AB-FUBINACA, or ADB-PINACA pursuant to 21 CFR part 1303.

The DEA cannot issue individual manufacturing quotas for PB–22, 5F–PB–22, AB–FUBINACA, or ADB–PINACA unless and until it establishes an aggregate production quota. Therefore, this notice proposes a 2014 aggregate production quota for PB–22, 5F–PB–22, AB–FUBINACA, and ADB–PINACA.

**DATES:** Comments or objections should be received on or before April 7, 2014.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–390P'' on all electronic and written correspondence. The DEA encourages that all comments be submitted electronically through *www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at *www.regulations.gov* for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Written comments submitted via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Ruth A. Carter, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

**SUPPLEMENTARY INFORMATION:**

#### Posting of Public Comments

The Freedom of Information Act applies to all comments received. All comments received are considered part of the public record and made available for public inspection online at *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 posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket 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 posted online or made available in the public docket, 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 posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file.

If you wish to inspect the DEA's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

## Background

Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The DEA established the 2014 aggregate production quotas for substances in schedules I and II on September 9, 2013 (78 FR 55099). Subsequently, on January 10, 2014, the DEA published in the **Federal Register** a notice of intent to temporarily place four synthetic cannabinoids: quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate (PB-22; QUPIC); quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22); *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (AB-FUBINACA); and *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (ADB-PINACA) in schedule I of the CSA (79 FR 1776). On February 10, 2014, the DEA published in the **Federal Register** a final order to temporarily place these four synthetic cannabinoids in schedule I of the CSA (79 FR 7577), making all regulations pertaining to schedule I controlled substances applicable to the manufacture of these four synthetic cannabinoids, including the establishment of an aggregate production quota pursuant to 21 CFR 1303.11.

PB-22, 5F-PB-22, AB-FUBINACA, and ADB-PINACA were non-controlled substances when the aggregate production quotas for schedule I and II substances were established, therefore, no aggregate production quotas for PB-22, 5F-PB-22, AB-FUBINACA, and ADB-PINACA were established at that time.

In determining the 2014 aggregate production quotas of these four cannabinoids, the Deputy Administrator considered the following factors in accordance with 21 U.S.C. 826(a) and 21 CFR 1303.11: (1) Total estimated net disposal of each substance by all manufacturers; (2) estimated trends in the national rate of net disposal; (3) total estimated inventories of the basic class and of all substances manufactured from the class; (4) projected demand for each class as indicated by procurement quotas requested pursuant to 21 CFR 1303.12; and (5) other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Deputy Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

The Deputy Administrator, therefore, proposes that the year 2014 aggregate production quotas for the following temporarily controlled schedule I controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class—Schedule I | Proposed 2014 quota |
|---|---|
| N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (ADB–PINACA) | 15 g |
| N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB–FUBINACA) | 15 g |
| quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB–22; 5F–PB–22) | 15 g |
| quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB–22; QUPIC) | 15 g |

## Comments

Pursuant to 21 CFR 1303.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this notice, the Deputy Administrator may hold a public hearing on one or more issues raised. In the event the Deputy Administrator decides in his sole discretion to hold such a hearing, the Deputy Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Deputy Administrator will publish in the **Federal Register** a final order establishing the 2014 aggregate production quota for PB–22, 5F–PB–22, AB–FUBINACA, and ADB–PINACA.

Dated: February 28, 2014.

**Thomas M. Harrigan,**

*Deputy Administrator.*

[FR Doc. 2014–05024 Filed 3–6–14; 8:45 am]

BILLING CODE 4410–09–P

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (BJA) Docket No. 1648]**

### Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a webinar meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss various issues relating to the operation and implementation of NMVTIS.

**DATES:** The meeting will take place on Wednesday March 26, 2014, from 1:00 p.m. to 3:00 p.m. ET.

**ADDRESSES:** This will be a webinar meeting. Those wishing to participate are asked to email their request to the Designated Federal Employee (DFE) listed below.

**FOR FURTHER INFORMATION CONTACT:** Todd Brighton, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; Phone: (202) 616–3879 [note: this is not a toll-free number]; Email: *Todd.Brighton@usdoj.gov*

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public. Members of the public who wish to participate in the webinar must register with Mr. Brighton at the above address at least seven (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Anyone requiring special accommodations should notify Mr. Brighton at least seven (7) days in advance of the meeting.

## Purpose

The NMVTIS Federal Advisory Committee will provide input and recommendations to the Office of Justice

Programs (OJP) regarding the operations and administration of NMVTIS. The primary duties of the NMVTIS Federal Advisory Committee will be to advise the Bureau of Justice Assistance (BJA) Director on NMVTIS-related issues, including but not limited to: implementation of a system that is self-sustainable with user fees; options for alternative revenue-generating opportunities; determining ways to enhance the technological capabilities of the system to increase its flexibility; and options for reducing the economic burden on current and future reporting entities and users of the system.

**Todd Brighton,**

*NMVTIS Enforcement Coordinator, Bureau of Justice Assistance, Office of Justice Programs.*

[FR Doc. 2014–04988 Filed 3–6–14; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0011]**

### Interlake Stamping Corp. (Also Doing Business as Interlake Industries, Inc.); Revocation of an Experimental Variance and Interim Order

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, the Occupational Safety and Health Administration (''OSHA'' or the ''Agency'') revokes an experimental variance and interim order granted by OSHA in 1976 and 1978, respectively, to Interlake Stamping Corp., (''Interlake'' or the ''applicant'') from several provisions of the OSHA standard that regulates mechanical power presses at 29 CFR 1910.217. In April 2011, Interlake submitted an application request for a permanent variance from these provisions, but later withdrew the application, stating that it would be too costly to comply with the conditions of the variance. Therefore, OSHA is revoking Interlake's experimental variance and the interim order.

**DATES:** The revocation becomes effective on March 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

*General and technical information:* Contact David 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; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov.* OSHA's Web page includes information about the Variance Program (see *http://www.osha.gov/dts/otpca/variances/index.html*).

**SUPPLEMENTAL INFORMATION:**

## I. Background

### *A. Previous Experimental Variance*

On August 31, 1976, OSHA granted Interlake Stamping Corp., 4732 East 355th Street, Willoughby, OH 44094, an experimental variance from the provisions of OSHA standards that regulate mechanical power presses at 29 CFR 1910.217 (41 FR 36702). Below is a description of the history of this experimental variance:

(1) On May 20, 1974, OSHA published a notice in the **Federal Register** announcing that Interlake submitted an application pursuant to Section 6(d) of the Occupational Safety and Health Act of 1970 (the Act; 29 U.S.C. 655) and 29 CFR 1905.11 for a permanent variance from several provisions of OSHA's mechanical power-presses standard (39 FR 17806); these provisions were 29 CFR 1910.217(c)(3)(iii)(*c*), which prohibited the use of presence-sensing-device-initiation (PSDI) systems, and 29 CFR 1910.217(d)(1), which regulated conduct of mechanical power-press operations. According to the May 20, 1974, **Federal Register** notice, Interlake proposed the following alternate means of compliance in its variance application:

> The applicant states that he has purchased a 22-ton Bliss OBI mechanical power press equipped with an air friction clutch and an Erwin Sick electronic light curtain. The press is equipped with special controls and a highly reliable brake monitoring system. The applicant further proposes to use the electronic light curtain as both a protective device and as a means of cycling the press. The applicant states that electronic light curtain devices are used as a tripping means in Europe and a large body of standards governing their design and use in this manner has been accumulated . . . .

(2) On June 3, 1974, OSHA published a notice in the **Federal Register** extending for 30 days the comment period on Interlake's application for a permanent variance (39 FR 19543).

(3) On February 3, 1976, OSHA published a **Federal Register** notice announcing that Interlake was abandoning its application for a permanent variance and, instead, was applying for an experimental variance pursuant to Section 6(b)(6)(c) of the Act (41 FR 4994). Interlake took this action because OSHA revised the requirements in 29 CFR 1910.217(d)(1) on May 20, 1974 (39 FR 41841), which obviated the applicant's need for a variance from that provision. Concurrently, OSHA renumbered 29 CFR 1910.217(c)(3)(iii)(*c*) as 29 CFR 1910.217(c)(3)(iii)(*b*). The new application, therefore, sought an experimental variance from 29 CFR 1910.217(c)(3)(iii)(*b*). According to the February 3, 1976, **Federal Register** notice, Interlake was seeking to conduct an experiment designed to demonstrate that it can use the presence-sensing-point-of-operation device on a mechanical power press as a tripping mechanism, in addition to its function as a safety device, while maintaining employee safety at or above the level provided by the standard. Interlake also claimed that the experiment would validate Swedish and German data showing that employers use this tripping mechanism virtually free of accidents.

(4) On August 31, 1976, OSHA published a notice in the **Federal Register** granting Interlake an experimental variance for a one-year period, August 31, 1976, to August 30, 1977 (41 FR 36702).

(5) On September 9, 1977, OSHA published a **Federal Register** notice extending the experimental variance for a six-month period, September 1, 1977, to February 28, 1978, to allow Interlake to collect additional information on a number of factors, including the effects of the experimental conditions on worker safety and productivity (42 FR 45389).

(6) On March 17, 1978, OSHA published a notice in the **Federal Register** extending the experimental variance for a two-year period, March 1, 1977, to February 28, 1979 (43 FR 11275). This extension allowed Interlake to continue collecting information on the effects of the experimental conditions on worker safety and productivity, but also allowed the Agency to collect information for a possible new standard regulating PSDI systems, including information on the need for a certification program and the level of interest in the regulated community for using PSDI systems. In this notice,

OSHA also granted Interlake an interim order to preserve the continuity of the experimental conditions pending a final decision on the variance.

(7) On March 6, 1979, OSHA published a notice in the **Federal Register** extending the experimental variance for an additional two-year period, March 6, 1979, to March 5, 1981, to continue collecting safety and productivity information, and to preserve the continuity of the experimental conditions (44 FR 12288).

(8) On May 29, 1981, OSHA published a **Federal Register** notice extending the experimental variance for an additional one-year period from May 29, 1981, to May 28, 1982 (46 FR 29010). The main purpose of this extension was to allow the Purdue Research Foundation, under contract to the National Institute for Occupational Safety and Health, to: (1) Observe and evaluate the self-tripping experiment at Interlake; (2) research the design and application practices that could develop if OSHA expanded the experiment to other sites or modified 29 CFR 1910.217(c)(3)(iii)(*b*); and (3) develop design and performance-criteria approval procedures, and continuing research strategies.

(9) In 1988, OSHA added paragraph (h) to 29 CFR 1910.217 (53 FR 8353). Paragraph (h) allows employers to install and use PSDI systems, but requires that OSHA-approved third parties validate the PSDI systems at the time of installation and annually thereafter. To date, no third party has requested OSHA's approval to validate PSDI systems. In the interim, Interlake continued operating mechanical power presses using PSDI systems under the interim order granted in 1978. However, on March 24, 2011, OSHA informed Interlake that it must submit an application for a permanent variance if it wanted to continue this practice (Ex. OSHA–2013–0011–002).

*B. Interlake's Application for a Permanent Variance*

On April 8, 2011, OSHA received Interlake's application seeking a permanent variance from Appendices A and C of 29 CFR 1910.217 (see Ex. OSHA–2013–0011–002). Appendix A sets forth requirements for certification/validation of PSDI systems, and Appendix C specifies requirements for OSHA recognition of third-party validation organizations for PSDI systems. Interlake proposed to use PSDI systems as tripping mechanisms under conditions similar to the conditions specified by the experimental variance granted to Interlake by OSHA in 1976 (see previous discussion).

In its variance application, and in its responses to OSHA's follow-up questions (Ex. OSHA–2013–0011–004), Interlake provided a detailed description of its proposed alternate means of worker protection during operation of the PSDI system, including a description of the power presses and light curtains used; the equipment-guarding means and worker training provided; and inspection, testing, and maintenance procedures. Additionally, in its responses to OSHA's follow-up questions, Interlake stated that it never had a worker injured while using PSDI systems during the 36 years it operated the systems under the conditions specified by the experimental variance.

On August 2, 2012, OSHA conducted a site-evaluation visit at Interlake's Willoughby, Ohio, plant. The purpose of the visit was to review and confirm the continued safe operation of the two mechanical power presses equipped with PSDI systems. Based on the results of the site-evaluation visit, OSHA, on March 13, 2013, proposed in a letter to Interlake several additional conditions that the Agency believed Interlake should include in its variance application (Ex. OSHA–2013–0011–005). On April 30, 2013, Interlake responded to this proposal (Ex. OSHA–2013–0011–006). OSHA reviewed Interlake's responses and modified several of the proposed conditions. In a letter dated September 4, 2013, OSHA notified Interlake of the Agency's revisions to the proposed conditions (Ex. OSHA–2013–0011–007). After reviewing these revisions, Interlake notified OSHA on September 17, 2013, that it is withdrawing its application for a permanent variance, stating:

> [T]he management team at Interlake Stamping has decided not to pursue the permanent variance for use of the Presence Sensing Device Initiation (PSDI). We feel it would be too costly for us to comply with all of the requirements mandated in the OSHA response going forward, and would be more economical for us to discontinue its use completely. We understand that the experimental variance that Interlake was granted will no longer be in effect and we have removed the connections completely disabling the PSDI system as of this date. (Emphasis in original; Ex. OSHA–2013–0011–008.)

## II. Revocation of Interlake's Experimental Variance

Based on its review of the record, and the applicant's request to withdraw its application for a permanent variance, OSHA finds that Interlake no longer needs the experimental variance. Therefore, under the authority specified by 29 CFR 1905.13(a)(2), OSHA is revoking the experimental variance granted to Interlake on August 31, 1976, and extended through April 30, 1982. With this notice, OSHA also is revoking the interim order granted to Interlake on March 17, 1978, under which Interlake continued to comply with the conditions of the experimental variance from May 1, 1982, to September 17, 2013.

Accordingly, Interlake must comply fully with the requirements of 29 CFR 1910.217(h) if it decides to use PSDI systems.

## III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by 29 U.S.C. 655, Secretary of Labor's Order No. 1–2012 (76 FR 3912; Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on March 4, 2014.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014–04982 Filed 3–6–14; 8:45 am]

BILLING CODE 4510–26–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–346; NRC–2010–0298]**

## License Renewal Application for Davis-Besse Nuclear Power Station, Unit 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft supplemental generic environmental impact statement; issuance, public meeting, and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft plant-specific Supplement 52 to the ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' NUREG–1437, regarding the renewal of operating license NPF–3 for an additional 20 years of operation for Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse). Davis-Besse is located in Ottawa County, Ohio. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC staff plans to hold two public meetings during the public comment period to present an overview of the draft plant-specific supplement to the

GEIS and to accept public comments on the document.

**DATES:** Submit comments by April 21, 2014. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0298. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Elaine Keegan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8517 or by email at *Elaine.Keegan@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Accessing Information and Submitting Comments

### *A. Accessing Information*

Please refer to Docket ID NRC–2010–0298 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0298.

• *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 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 draft plant-specific Supplement 52 to the GEIS, is available in ADAMS under Accession No. ML14050A290.

• *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. In addition, paper copies of the draft plant specific Supplement 52 are available to the public at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, OH, 43452; and the Toledo-Lucas County Public Library, 325 North Michigan Street, Toledo, OH, 43452.

### *B. Submitting Comments*

Please include Docket ID NRC–2010–0298 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Discussion

The NRC is issuing for public comment a draft plant-specific Supplement 52 to the GEIS, regarding the renewal of operating license NPF–3 for an additional 20 years of operation for Davis-Besse. Supplement 52 to the GEIS includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. The NRC's preliminary recommendation is that the adverse environmental impacts of license renewal for Davis-Besse are not great enough to deny the option of license renewal for energy planning decisionmakers.

## III. Public Meetings

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comment on the document. Two meetings will be held at the Camp Perry Conference Center, 1000 Lawrence Road, Bldg. 600, Port Clinton, Ohio 43453 on Tuesday, March 25, 2014. The first session will convene at 2:00 p.m. and will continue until 4:00 p.m., as necessary. The second session will convene at 7:00 p.m. and will continue until 9:00 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Elaine Keegan, the NRC Environmental Project Manager, at 1–800–368–5642, extension 8517, or by email at *Elaine.Keegan@nrc.gov* no later than Wednesday, March 19, 2014. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. 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 present information at the public meeting, the need should be brought to Ms. Keegan's attention no later than Monday, March 10, 2014, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

Dated at Rockville, Maryland, this 24th day of February, 2014.

For the Nuclear Regulatory Commission.

**Brian D. Wittick,**

*Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. 2014–05021 Filed 3–6–14; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–027 and 52–028; NRC–2008–0441]**

## Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric and Gas; Liquid Radwaste System Consistency Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 10 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric and Gas (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee), for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3 located in Fairfield County, South Carolina. The amendment changes the VCSNS Tier 1 (COL Appendix C) Figure 2.3.10–1, Liquid Radwaste System (WLS), and Updated Final Safety Analysis Report (UFSAR) Tier 2 tables, text and figures to align VCSNS Tier 1 with Tier 2 information provided in the UFSAR and to achieve consistency within VCSNS Tier 1 material by (1) changing the safety classification of the Passive Core Cooling System (PXS) and Chemical and Volume Control System (CVS) compartment drain hubs, (2) changing the connection type from the PXS Compartments drains A and B to a header to match the design description, (3) changing the valve types for three valves in the Tier 1 figure to conform to the design description and (4) changing depiction of Tier 1 WLS components to conform to Tier 1 Figure Conventions.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents Collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. 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.
- *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:** Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

- The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000 Design,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 10 to COLs, NPF–93 and NPF–94, to the licensee. The request for the amendment and exemption were submitted by letter dated August 30, 2013 (ADAMS Accession No. ML13246A228). The licensee supplemented this request on October 15, 2013 (ADAMS Accession No. ML13290A517). The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR Part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought changes to the VCSNS Tier 1 (COL Appendix C) Figure 2.3.10–1, WLS, and UFSAR Tier 2 tables, text and figures to align VCSNS Tier 1 with Tier 2 information provided in the UFSAR and to achieve consistency within VCSNS Tier 1 material by (1) changing the safety classification of the PXS and CVS compartment drain hubs, (2) changing the connection type from the PXS Compartments drains A and B to a header to match the design description, (3) changing the valve types for three valves in the Tier 1 figure to conform to the design description and (4) changing depiction of Tier 1 WLS components to conform to Tier 1 Figure Conventions.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13354B798.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML13354B740 and ML13354B768. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML13354B723 and ML13354B731. A summary of the amendment documents is provided in Section III of this document.

### II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 30, 2013, and revised by the letter dated October 15, 2013, South Carolina Electric & Gas Company (licensee) requested from the Nuclear Regulatory Commission (Commission) an exemption from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, Appendix D, Section III.B, ''Design Certification Rule for the AP1000 Design, Scope, and Contents,'' as part of license amendment request, ''Liquid

Radwaste System Consistency Changes'' (LAR 13–32).

For the reasons set forth in Section 3.1 of the NRC staff Safety Evaluation, which can be found at ADAMS Accession Number ML13354B798, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR Part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document Tier 1 Figure 2.3.10–1, as described in the licensee's request dated August 30, 2013, and revised by the letter dated October 15, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 10, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff Safety Evaluation, this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of January 8, 2013.

## III. License Amendment Request

By letter dated August 30, 2013, the licensee requested that the NRC amend the COLs for VCSNS Units 2 and 3, COLs NPF–93 and NPF–94. The licensee revised this application on October 15, 2013. The proposed amendment would depart from Tier 2 Material previously incorporated into the UFSAR. Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VCSNS, Units 2 and 3 COLs. The requested amendment would amend Combined License Nos. NPF–93 and NPF–94 for the VCSNS Units 2 and 3 by departing from the Combined License Appendix C information and the plant-specific DCD Tier 2 material by revising the safety function and classification of WLS drain hubs in the CVS and PXS compartments. In addition, the proposed changes would modify the PXS compartment drain piping connection; WLS valve types, and depiction of components in the WLS figures.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 17, 2013 (78 FR 57180). No comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

## IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 30, 2013, and revised by letter dated October 15, 2013. The exemption and amendment were issued on January 8, 2014 as part of a combined package to the licensee (ADAMS Accession No. ML13354B699).

Dated at Rockville, Maryland, this 25th day of February 2014.

For the Nuclear Regulatory Commission.

**Lawrence J. Burkhart,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2014–05022 Filed 3–6–14; 8:45 am]

**BILLING CODE 7590–01–P**

# POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2014–20 and CP2014–33; Order No. 2001]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Contract 79 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 7, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 79 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed six attachments: A copy of the contract, a redacted copy of Governors' Decision No. 11–6, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2014–20 and CP2014–33 to

[1] Request of the United States Postal Service to Add Priority Mail Contract 79 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 26, 2014 (Request).

consider the Request pertaining to the proposed Priority Mail Contract 79 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than March 7, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2014–20 and CP2014–33 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments by interested persons in these proceedings are due no later than March 7, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–04961 Filed 3–6–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2014–9; Order No. 1999]**

## Amendment to Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing requesting an amendment to Priority Mail Contract 70. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 7, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

### I. Introduction

On February 25, 2014, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 70 subject to this docket (Amendment).[1] The Postal Service includes two attachments in support of its Notice:

- Attachment A—a redacted copy of the Amendment to the existing Priority Mail Contract 70.
- Attachment B—certified statement of compliance with 39 U.S.C. 3633(a).

The Postal Service also filed the supporting financial documentation and the unredacted Amendment under seal. Notice at 1. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of customer-identifying information that it has filed under seal. *Id.*

The Amendment broadens the application of the contract to include prices for Priority Mail packages having weights and sizes different than those described in the original contract.[2] The Amendment is scheduled to take effect one business day following the day on which the Commission issues all necessary regulatory approval. Notice, Attachment A at 1.

### II. Notice of Filings

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR Part 3020, subpart B. Comments are due no later than March 7, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 70, February 25, 2014 (Notice).

[2] *Compare id.,* Attachment A at 1–2 (filed under seal) *with* Docket Nos. MC2014–8 and CP2014–9, Request of the United States Postal Service to Add Priority Mail Contract 70 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 19, 2013, Attachment B at 1–2 (filed under seal).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2014–9 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 7, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–04960 Filed 3–6–14; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2013–79; Order No. 2003]**

## Amendment to Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing an amendment to Priority Mail Express & Priority Mail Contract 14. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 7, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

### I. Introduction

On February 26, 2014, the Postal Service filed notice that it has agreed to an amendment to the existing Priority

Mail Express & Priority Mail Contract 14 subject to this docket (Amendment).[1] The Postal Service includes two attachments in support of its Notice:

- Attachment A—a redacted copy of the Amendment to the existing Priority Mail Express & Priority Mail Contract 14.
- Attachment B—a certified statement of compliance with 39 U.S.C. 3633(a).

The Postal Service also filed supporting financial documentation and the unredacted Amendment under seal. Notice at 1. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of materials filed under seal. *Id.*

The Amendment changes the prices for some of the customer's Priority Mail contract packages.[2] It is scheduled to take effect one business day following the day on which the Commission issues all necessary regulatory approval. Notice, Attachment A at 1.

## II. Notice of Filings

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than March 7, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission previously appointed Pamela A. Thompson to represent the interests of the general public (Public Representative) in this docket.[3] She will continue to serve in that capacity.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission reopens Docket No. CP2013–79 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

3. Comments are due no later than March 7, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2014–04981 Filed 3–6–14; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express & Priority Mail Contract 14, February 26, 2014 (Notice).

[2] *Compare id.* Attachment A at 2 (filed under seal) *with* Docket Nos. MC2013–58 and CP2013–79, Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 14 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 30, 2013, Attachment B at 3 (filed under seal).

[3] Docket Nos. MC2013–58 and CP2013–79, Order No. 1825, Notice and Order Concerning Addition of Priority Mail Express & Priority Mail Contract 14 to the Competitive Product List, September 3, 2013, at 3.

# SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## Aventura Equities, Inc.; Order of Suspension of Trading

March 5, 2014

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aventura Equities, Inc. (''Aventura'') because of questions concerning the adequacy and accuracy of publicly available information about Aventura, including, among other things, its financial condition, the control of the company, its business operations, and trading in its securities. Aventura is a Florida corporation based in Georgetown, South Carolina, and is traded under the symbol ''AVNE.''

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 company.

*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 company is suspended for the period from 9:30 a.m. EST, on March 5, 2014, through 11:59 p.m. EDT, on March 18, 2014.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2014–05084 Filed 3–5–14; 4:15 pm]

**BILLING CODE 8011–01–P**

# SMALL BUSINESS ADMINISTRATION

## Interagency Task Force on Veterans Small Business Development; Notice of Meeting

**AGENCY:** Small Business Administration.

**ACTION:** Notice of open Federal Interagency Task Force Meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for its public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

**DATES:** Thursday, March 20, 2014, from 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** SBA 409 3rd Street NW., Washington, DC 20419.

*Room:* Eisenhower Conference Room B, located on the Concourse Level.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB'S). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''three focus areas'': (1) Training, Counseling & Capital; (2) Federal Contracting & Verification; (3) Improved Federal Support on November 1, 2011, the Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 Recommendations. In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public, however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Barbara Carson, by February 28, 2014 by email in order to be placed on the agenda. Comments for the Record should be applicable to the ''three focus areas'' of the Task Force and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible. Written comments should be emailed to Barbara Carson, Designated Federal Officer Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, at the email address for the Task Force, *vetstaskforce@sba.gov* . Additionally, if

you need accommodations because of a disability or require additional information, please contact Barbara Carson, Designated Federal Official for the Task Force at (202) 205–6773; or by email at: *barbara.carson@sba.gov*. For more information, please visit our Web site at *www.sba.gov/vets*.

Dated: February 21, 2014.

**Diana Doukas,**

*SBA Committee Management Officer.*

[FR Doc. 2014–04580 Filed 3–6–14; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0366]**

### 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 10 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 March 23, 2014. Comments must be received on or before April 7, 2014.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2011–0366], 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 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Eugenio V. Bermudez (MA)
John A. Carroll, Jr. (AL)
Mark W. Crocker (TN)
Johnny Dillard (SC)
Keith J. Haaf (VA)
Edward M. Jurek (NY)
Allen J. Kunze (ND)
Mark A. Smalls (GA)
Glenn R. Theis (MN)
Peter A. Troyan (MI)

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 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (77 FR 5874; 77 FR 17117). Each of these 10 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 April 7, 2014.

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 10 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–2011–0366 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–2011–0366 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: February 25, 2014.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2014–04978 Filed 3–6–14; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2013–0192]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 46 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective March 7, 2014. The exemptions expire on March 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/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.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). 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).

**Background**

On December 26, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from

46 individuals and requested comments from the public (78 FR 78479). The public comment period closed on January 27, 2014, and one comment was received.

FMCSA has evaluated the eligibility of the 46 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

**Diabetes Mellitus and Driving Experience of the Applicants**

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 46 applicants have had ITDM over a range of 1 to 23 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 26, 2013, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comments**

FMCSA received one comment in this proceeding. The comment is discussed and considered below.

Antonio A. Sena expressed his thanks and appreciation to the FMCSA staff for their help and guidance throughout the application process.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the 46 exemption applications, FMCSA exempts William B. Andrus (AL), Chad E. Anger (WI), Thomas C. Aston (MD), Jared F. Beard (ND), Edward Blake (GA), Jerrel F. Bower (MO), Jerry A. Campbell (OH), Brian M. Chase (VA), Charles R. Clayton (NJ), Phillip Covel (NE), Ariel Cuevas (NJ), Glen C. Davis (TN), Nicholas P. Dube (RI), Arthur W. Ehrenzeller (PA), Manuael Elizondo (TX), Michael K. Farris (IN), Merino Fernandes (IL), Craig J. Gadley, Sr. (NY), Daniel Grove, Jr. (PA), Mary F. Guilfoy (IN), James M. Hatcher (MS), Edward S. Ionescu (IL), Jeffrey James (AK), Hayward S. Mason (NY), Guy B. Mayes (WA), Ashun R. Merritt (GA), Herbert A. Morton (CA), Colby A. Nutter (VA), Jayrome D. Rimolde (MN), Gale Roland (PA), Larry J. Sanders (MD), Kelly T. Scholl (MN), Antonio A. Sena (CA), Gregory G. Sisco (IA), Travers L. Stephens (GA), Brittany K. Tomasko (CA), Johnny G. Wallace (AR), Daren Warren (NY), Aaron E. Webb (WA), Billy J. Webb, Jr. (MS), Alan T. Whalen (NY), Thomas L. Whitley (IN), Randall S. Williams (PA), Tomme J. Wirth (IA), Charles J. Wirth (WI), Thomas A. Wysocki (NJ) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 25, 2014.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2014–04977 Filed 3–6–14; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2014–0007]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collections:

(1) Title VI as it Applies to FTA Grant Programs
(2) Nondiscrimination as it Applies to FTA Grant Programs
(3) Charter Service Operations

The information collected is necessary to determine eligibility of applicants and ensure the proper and timely expenditure of federal funds within the scope of each program. The **Federal Register** notice with a 60-day comment period soliciting comments was published on February 6, 2014 (Citation 79 FR 25). One comment was received on February 18, 2014. This comment is currently under FTA's review.

**DATES:** Comments must be submitted before April 7, 2014. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Tia Swain, Office of Administration, Office of Management Planning, (202) 366–0354.

**SUPPLEMENTARY INFORMATION:**

*Title:* Title VI as it Applies to FTA Grant (*OMB Number: 2132–0540*).

*Abstract:* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) states:

''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

To achieve this purpose, each Federal department and agency which provides financial assistance for any program or activity is authorized and directed by the Department of Justice (DOJ) to effectuate provisions of Title VI for each program or activity by issuing generally applicable regulations or requirements. The Department of Transportation (DOT) has issued its regulation implementing this DOJ mandate.

In this regard, the responsibility of the FTA is to ensure that Federally-supported transit services and benefits are distributed by applicants, recipients, and subrecipients of FTA assistance in a manner consistent with Title VI. The employment practices of a grant applicant, recipient, or subrecipient are also covered under Title VI if the primary purpose of the FTA-supported program is to provide employment or if those employment practices would result in discrimination against beneficiaries of FTA-assisted services and benefits.

FTA policies and requirements are designed to clarify and strengthen Title VI (service equity) procedures for FTA grant recipients by requiring submission of written plans and approval of such plans by the agency. All project sponsors receiving financial assistance pursuant to an FTA-funded project shall not discriminate in the provision of services because of race, color, or national origin. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights are designed to accomplish this objective and diminish possible vestiges of discrimination among FTA grant recipients. FTA's assessment of the requirements indicated that the formulation and implementation of the Title VI Program should occur with a decrease in costs to such applicants and recipients.

*Estimated Total Annual Burden:* 5,332 hours.

*Title:* Nondiscrimination as it Applies to FTA Grant Programs (*OMB Number: 2132–0542*).

*Abstract:* 49 Code of Federal Regulations, part 21.5 states: ''Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees).''

All entities receiving Federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's EEO procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that formulating, submitting, and implementing EEO programs should minimally increase costs for FTA applicants and recipients. To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment. The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

*Estimated Total Annual Burden:* 2,425 hours.

*Title:* Charter Service Operations (*OMB Number: 2132–0543*).

*Abstract:* FTA recipients may only provide charter bus service with FTA-funded facilities and equipment if the charter service is incidental to the provision of transit service (49 U.S.C. 5323(d). This restriction protects charter service providers from unauthorized competition by FTA recipients.

The requirements of 49 U.S.C. 5323(d) are implemented in FTA's charter regulation (Charter Service Rule) at 49 CFR part 604. Amended in 2008, the Charter Service Rule now contains five (5) provisions that impose information collection requirements on FTA recipients of financial assistance from FTA under Federal Transit Law.

First, 49 CFR Section 604.4 requires all applicants for Federal financial assistance under Federal Transit Law, unless otherwise exempted under 49 CFR Section 604.2, to enter into a ''Charter Service Agreement,'' contained in the Certifications and Assurances for FTA Assistance Programs. The Certifications and Assurances become a part of the Grant Agreement or

Cooperative Agreement for Federal financial assistance upon receipt of Federal funds. The rule requires each applicant to submit one Charter Service Agreement for each year that the applicant intends to apply for the Federal financial assistance specified above.

Second, 49 CFR Section 604.14(3) requires a recipient of Federal funds under Federal Transit Law, unless otherwise exempt, to provide email notification to all registered charter providers in the recipient's geographic service area each time the recipient receives a request for charter service that the recipient is interested in providing.

Third, 49 CFR Section 604.12(c) requires a recipient, unless otherwise exempt under 49 CFR part 604.2, to submit on a quarterly basis records of all instances that the recipient provided charter service.

Fourth, 49 CFR Section 604.13 requires a private charter provider to register on FTA's Charter Registration Web site at *http://ftawebprod.fta.dot.gov/CharterRegistration/in* order to qualify as a registered charter service provider and receive email notifications by recipients that are interested in providing a requested charter service. The rule requires that a registered charter service provider must update its information on the Charter Registration Web site at least once every two years. Currently, there are a total of 192 registered private charter service providers. Registration has consistently decreased over the years.

Lastly, 49 CFR Section 604.7 permits recipients to provide charter service to Qualified Human Service Organizations (QHSO) under limited circumstances. QHSOs that do not receive Federal funding under programs listed in Appendix A to part 604 and seek to receive free or reduced rate services from recipients must register on FTA's Charter Registration Web site (49 CFR Section 604.15(a)).

*Estimated Total Annual Burden:* 369.7 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street NW. Washington, DC 20503, Attention: FTA Desk Officer.

*Comments are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Matthew M. Crouch,**

*Associate Administrator for Administration.*

[FR Doc. 2014–04758 Filed 3–6–14; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. EP 290 (Sub-No. 4)]**

### Railroad Cost Recovery Procedures—Productivity Adjustment

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Proposed railroad cost recovery procedures productivity adjustment.

**SUMMARY:** In a decision served on March 4, 2014, we proposed to adopt 1.010 (1.0% per year) as the measure of average change in railroad productivity for the 2008–2012 (5-year) averaging period. This represents an increase of 0.1% from the average for the 2007–2011 period. The Board's March 4, 2014 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 19, 2014.

**DATES:** The productivity adjustment is effective March 19, 2014. Comments are due by March 17, 2014.

**ADDRESSES:** Send comments (an original and 10 copies) referring to Docket No. EP 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Michael Smith, (202) 245–0322. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 4, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2014–05049 Filed 3–6–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974, as Amended

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of Proposed Alterations to Privacy Act Systems of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of proposed alterations to systems of records entitled:

46.002, Criminal Investigation Management Information System (CIMIS) and case files;

46.003, Confidential Informants;

46.005, Electronic Surveillance Files;

46.009, Centralized Evaluation and Processing of Information Items (CEPIIs), Evaluation and Processing of Information (EOI);

46.015, Relocated Witnesses; and

46.050, Automated Information Analysis System.

**DATES:** Comments must be received no later than April 7, 2014. These altered systems of records will be effective April 16, 2014 unless the IRS receives comments that would result in a contrary determination.

**ADDRESSES:** Comments should be sent to Anne Jensen, Tax Law Specialist, Office of Privacy, Governmental Liaison, and Disclosure, 1111 Constitution Avenue NW., Room 1621, Washington, DC 20224. Comments will be available for inspection and copying in the Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 317–4997 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Anne Jensen, Tax Law Specialist, Office of Privacy, Governmental Liaison, and Disclosure, 1111 Constitution Avenue NW., Room 1621, Washington, DC 20224. Ms. Jensen may be reached via telephone at (202) 317–4997 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The IRS proposes to revise Criminal Investigation's six existing systems of records. In conjunction with these revisions, the IRS will delete one of the existing systems of records, leaving five remaining systems of records. The purpose of these revisions and deletions is to better reflect the reorganization and realignment of Criminal Investigation, a business unit under the Deputy Commissioner (Services and Enforcement) following enactment of the IRS Restructuring and Reform Act of 1998, to simplify the notices, to more closely reflect the nature of the work currently performed by the various components of Criminal Investigation, both in headquarters and in the field, and to enumerate certain additional routine uses that may be made of the individually identifiable information maintained in these systems of records. This revision should enable individuals to more readily identify the systems of records in which Criminal Investigation may maintain records about them. The revised routine uses more fully describe the circumstances under which the agency may use these records. A final exemption rule, which does not alter the exemptions claimed for the individually identifiable information maintained in these consolidated systems of records, is being published separately under the rules section of the **Federal Register**.

The IRS currently maintains six systems of records related to the functions of Criminal Investigation. Notices describing these systems of records were most recently published at 77 FR 47984–47987 (August 10, 2012). The IRS proposes to delete the system of records described below:

Treasury/IRS 46.009, Centralized Evaluation and Processing of Information Items (CEPIIs), Evaluation and Processing of Information (EOI)

The IRS proposes to revise the five systems of records listed below:

Treasury/IRS 46.002, Criminal and Investigation Management Information System (CIMIS) and case files

Treasury/IRS 46.003, Confidential Informants

Treasury/IRS 46.005, Electronic Surveillance Files

Treasury/IRS 46.015, Relocated Witnesses

Treasury/IRS 46.050, Automated Information Analysis System.

A final rule exempting the proposed altered systems of records from certain provisions of the Privacy Act will be published separately in the **Federal Register**.

As required by 5 U.S.C. 552a(r), a report of altered systems of records has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The five proposed revised systems of records, described above, are published in their entirety below.

Dated: February 20, 2014.

**Helen Goff Foster,**

*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

## Treasury/IRS 46.002

### SYSTEM NAME:

Management Information System and Case Files, Criminal Investigation—Treasury/IRS.

### SYSTEM LOCATION:

Headquarters, Field, Campus, and Computing Center offices. (See the Appendix published in the **Federal Register** on August 10, 2012, for addresses.)

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects and potential subjects of Criminal Investigation (CI) investigations and other individuals of interest to CI, such as witnesses and associates of subjects or potential subjects of CI investigations; individuals about whom CI has received information alleging their commission of, or involvement with, a violation of Federal laws within IRS jurisdiction, including individuals who may be victims of identity theft or other fraudulent refund or tax schemes; individuals identified as potentially posing a threat to the Commissioner, other Agency officials, or visiting dignitaries, or as having inappropriately contacted the Commissioner or other Agency officials; IRS employees assigned to work matters handled by CI.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to possible violations of laws under the enforcement jurisdiction of the IRS, received by the IRS from other sources or developed during investigative activities, that identify or may identify criminal or civil noncompliance with Federal tax laws and other Federal laws delegated to CI for investigation or enforcement; information arising from investigative activities conducted by CI in conjunction with other Federal, state, local, or foreign law enforcement, regulatory, or intelligence agencies; personal, identification, criminal history, and other information, including information sources, pertaining to individuals identified as person(s) of interest by Special Agents assigned to the Dignitary Protection Detail; personnel and workload management information. Records include biographical, travel, communication, financial, and surveillance information.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 5311 et seq.; Department of the Treasury Delegation Orders and Directives authorizing CI to conduct investigations into specified non-tax crimes.

### PURPOSE(S):

To maintain, analyze, and process sensitive investigative information that identifies or may identify criminal noncompliance with Federal tax laws and other Federal laws delegated to CI for investigation or enforcement, and that identifies or may identify the individuals connected to such activity. To establish linkages between identity theft and refund or other tax fraud schemes, and the individuals involved in such schemes, that may be used to further investigate such activity and to perfect filters that identify fraudulent returns upon filing and to facilitate tax account adjustments for taxpayers victimized by these schemes.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. Disclosure of information covered by 31 U.S.C. 5311, et seq. or 12 U.S.C. 1951, et seq. (Bank Secrecy Act) may be made only as provided by Title 31, U.S.C., and Treasury guidelines. Other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding,

and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to Federal, State, local, tribal, and foreign law enforcement and regulatory agencies regarding violations or possible violations of Bank Secrecy Act, money laundering, tax, and other financial laws when relevant and necessary to obtain information for an investigation or enforcement activity.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) Disclose information to foreign governments in accordance with international agreements.

(9) Disclose information to the news media as described in IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(10) Disclose information to a defendant in a criminal prosecution, the DOJ, or a court of competent jurisdiction when required in criminal discovery or by the Due Process Clause of the Constitution.

(11) Disclose information, to the extent deemed necessary and appropriate for use in announcements to the general public that the IRS or the Department of the Treasury seeks to locate, detain, or arrest specified individuals in connection with criminal activity under CI's investigative jurisdiction.

(12) Disclose information to appropriate agencies, entities, and persons when (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic media.

**RETRIEVABILITY:**

By name, address, taxpayer identification number, or telephone, passport, financial account, driver or professional license, or criminal record numbers, or other identifying detail contained in the investigative records, including financial information, geographical location/travel information, surveillance records, communication and contact information, or biographical data of the subject or an associate of the subject, a witness, or a victim of alleged identity theft or other fraudulent refund or tax scheme; identity of the individual(s) who provided information; name or employee number of assigned employee(s).

**SAFEGUARDS:**

Access controls are not less than those published in IRM 10.2, Physical Security Program, and IRM 10.8, Information Technology (IT) Security.

**RETENTION AND DISPOSAL:**

Records pertaining to persons of interest identified by Special Agents assigned to the Dignitary Protection Detail are maintained until such time that the individual or group no longer poses a threat. Other records are retained and disposed of in accordance with the record control schedules applicable to the records of Criminal Investigation, IRM 1.15.30.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Criminal Investigation. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Written inquiries should be addressed as stated in the Appendix published in the **Federal Register** on August 10, 2012. This system of records contains records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2).

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Records in this system are exempt from sections (c)(3)–(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). (See 31 CFR 1.36.)

## Treasury/IRS 46.003

**SYSTEM NAME:**

Confidential Informant Records, Criminal Investigation—Treasury/IRS.

**SYSTEM LOCATION:**

Headquarters and Field offices. (See the Appendix published in the **Federal Register** on August 10, 2012, for addresses.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former confidential informants; subjects of confidential informants' reports.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information about current and former confidential informants, including their personal and financial information and investigative activities with which each confidential informant is connected.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 5311 et seq.; Department of the Treasury delegation orders and directives authorizing CI to conduct investigations into specified non-tax crimes.

**PURPOSE(S):**

To maintain a file of the identities and background material of current and former confidential informants.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. Disclosure of information covered by 31 U.S.C. 5311, et seq. or 12 U.S.C. 1951, et seq. (Bank Secrecy Act) may be made only as provided by Title 31, U.S.C., and Treasury guidelines. Other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to Federal, State, local, tribal, and foreign law enforcement and regulatory agencies regarding violations or possible violations of Bank Secrecy Act, money laundering, tax, and other financial laws when relevant and necessary to obtain information for an investigation or enforcement activity.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) Disclose information to foreign governments in accordance with international agreements.

(9) Disclose information to the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(10) Disclose information to a defendant in a criminal prosecution, the DOJ, or a court of competent jurisdiction when required in criminal discovery or by the Due Process Clause of the Constitution.

(11) Disclose information to appropriate agencies, entities, and persons when (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Paper records and electronic media

**RETRIEVABILITY:**

By confidential informant's name, address, or taxpayer identification number; investigation number; or other identifying detail (such as telephone, driver's license, passport, or financial account numbers); name of the subject or other persons identified in the confidential informant's report or memoranda; name or employee number of assigned employee(s).

**SAFEGUARDS:**

Access controls are not less than those published in IRM 10.2, Physical Security Program, and IRM 10.8, Information Technology (IT) Security.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the record control schedules applicable to the records of Criminal Investigation, IRM 1.15.30.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Criminal Investigation. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any records contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Written inquiries should be addressed as stated in the Appendix published in the **Federal Register** on August 10, 2012. This system of records contains records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2).

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records contains investigatory material compiled for law

enforcement purposes whose sources need not be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Records in this system are exempt from sections (c)(3)–(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). (See 31 CFR 1.36.)

## TREASURY/IRS 46.005

**SYSTEM NAME:**

Electronic Surveillance and Monitoring Records, Criminal Investigation—Treasury/IRS.

**SYSTEM LOCATION:**

Headquarters office. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Subjects of electronic surveillance, including associates identified by the surveillance or otherwise.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information received or developed during CI's investigative activities relating to authorized electronic surveillance activities; investigative reports and files regarding electronic surveillance conducted by CI independently or in conjunction with other Federal, state, local, or foreign law enforcement, or intelligence agencies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 5311 et seq.; Department of Treasury Delegation Orders and Directives authorizing CI to conduct investigations into specified non-tax crimes.

**PURPOSE:**

To maintain, analyze, and process sensitive investigative data obtained through authorized electronic surveillance that identifies or may identify criminal noncompliance with Federal tax law or other laws delegated to CI for enforcement.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. Disclosure of information covered by 31 U.S.C. 5311, et seq. or 12 U.S.C. 1951, et seq. (Bank Secrecy Act) may be made only as provided by Title 31, U.S.C., and Treasury guidelines. Other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to Federal, State, local, tribal, and foreign law enforcement and regulatory agencies regarding violations or possible violations of Bank Secrecy Act, money laundering, tax, and other financial laws when relevant and necessary to obtain information for an investigation or enforcement activity.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) Disclose information to foreign governments in accordance with international agreements.

(9) Disclose information to the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(10) Disclose information to a defendant in a criminal prosecution, the DOJ, or a court of competent jurisdiction when required in criminal discovery or by the Due Process Clause of the Constitution.

(11) Disclose information to appropriate agencies, entities, and persons when (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Paper records and electronic media.

**RETRIEVABILITY:**

By name, address, taxpayer identification number, or other identifying detail (telephone, driver's license, passport, criminal record, or financial account numbers) of the subject or an associate of the subject; investigation number; address, telephone number, or other locational criteria of the person or location under surveillance; name or employee number of assigned employee(s).

**SAFEGUARDS:**

Access controls are not less than those published in IRM 10.2, Physical Security Program, and IRM 10.8, Information Technology (IT) Security.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the record control schedules applicable to the records of Criminal Investigation, IRM 1.15.30.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Criminal Investigation. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Written inquiries should be addressed as stated in the Appendix published in the **Federal Register** on August 10, 2012. This system of records contains records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2).

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Records in this system are exempt from sections (c)(3)–(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). (See 31 CFR 1.36.)

## TREASURY/IRS 46.015

**SYSTEM NAME:**

Relocated Witness Records, Criminal Investigation—Treasury/IRS.

**SYSTEM LOCATION:**

Headquarters office. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are recommended by IRS for placement in the Federal witness security program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personal information about individuals recommended by IRS for placement in the Federal witness security program, including reasons for recommendation and status of the recommendation (pending, accepted, denied). Records include information about individuals denied acceptance (including reasons for denial) and individuals accepted and the relocation and other services provided or offered to these individuals.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 5311 *et seq.*; Department of the Treasury Delegation Orders and Directives authorizing CI to conduct investigations into specified non-tax crimes.

**PURPOSE:**

To maintain information on individuals who are recommended by IRS for placement in the Federal witness security program. Records are used to ensure that appropriate services are provided to each individual.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. Disclosure of information covered by 31 U.S.C. 5311, *et seq.* or 12 U.S.C. 1951, *et seq.* (Bank Secrecy Act) may be made only as provided by Title 31, U.S.C., and Treasury guidelines. Other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) the IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to Federal, State, local, tribal, and foreign law enforcement and regulatory agencies regarding violations or possible violations of Bank Secrecy Act, money laundering, tax, and other financial laws when relevant and necessary to obtain information for an investigation or enforcement activity.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) Disclose information to foreign governments in accordance with international agreements.

(9) Disclose information to the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage To Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(10) Disclose information to a defendant in a criminal prosecution, the DOJ, or a court of competent jurisdiction when required in criminal discovery or by the Due Process Clause of the Constitution.

(11) Disclose information to appropriate agencies, entities, and persons when (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the

suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic media.

**RETRIEVABILITY:**

By the name, address, taxpayer identification number, or other identifying detail (such as telephone, driver's license, passport, or financial account numbers); investigation number pertaining to the individual whom CI recommends enter the Federal witness protection program; the identity of the person against whom that individual testified.

**SAFEGUARDS:**

Access controls are not less than those published in IMR 10.2, Physical Security Program, and IRM 10.8, Information Technology (IT) Security.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the record control schedules applicable to the records of Criminal Investigation, IRM 1.15.30.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Criminal Investigation. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Written inquiries should be addressed as stated in the Appendix published in the **Federal Register** on August 10, 2012. This system of records contains records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2).

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Records in this system are exempt from sections (c)(3)–(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). (See 31 CFR 1.36.)

## TREASURY/IRS 46.050

**SYSTEM NAME:**

Automated Information Analysis and Recordkeeping, Criminal Investigation—Treasury/IRS.

**SYSTEM LOCATION:**

Headquarters, Field, Campus, and Computing Center offices. (See the Appendix published in the **Federal Register** on August 10, 2012, for addresses.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals involved in financial transactions that require the reporting of information reflected in the 'Categories of Records' below.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Financial records pertaining to transactions with reporting requirements under the Internal Revenue Code, the Bank Secrecy Act, or other Federal law, and reports of suspicious activity pertaining to such transactions. Such transactions include international transportation of currency or monetary instruments, cash payments over $10,000 received in a trade or business, financial institution currency transaction reports, registrations of money services businesses, and maintenance of accounts in banks or other financial institutions outside the U.S. Some records in this system are copied from other systems of records, including: Individual Master File (Treasury/IRS 24.030); Business Master File (Treasury/IRS 24.046); Currency Transaction Reports (CTRs) (FinCEN .003); Report of International Transportation of Currency or Monetary Instruments (CMIRs) (FinCEN .003); Suspicious Activity Reports (SARs) (FinCEN .002); Foreign Bank and Financial Accounts (FBARs) (FinCEN .003); Reports of Cash Payments over $10,000 Received in a Trade or Business (FinCEN .003); Registration of Money Services Business; and other forms required by the Bank Secrecy Act (FinCEN .003).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 5311 *et seq.*; Department of the Treasury Delegation Orders and Directives authorizing CI to conduct investigations into specified non-tax crimes.

**PURPOSE:**

To maintain, analyze, and process records and information that may identify patterns of financial transactions indicative of criminal and/or civil noncompliance with tax, money laundering, Bank Secrecy Act, and other financial laws and regulations delegated to CI for investigation or enforcement, and that identifies or may identify the individuals connected to such activity. To establish linkages between fraudulent transactions or other activities, and the individuals involved in such actions, that may be used to further investigate such activity and to perfect filters that identify information pertaining to such activity.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided in 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. Disclosure of information covered by 31 U.S.C. 5311, et seq. or 12 U.S.C. 1951, et seq. (Bank Secrecy Act) may be made only as provided by Title 31, U.S.C., and Treasury guidelines. Other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or

any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to Federal, State, local, tribal, and foreign law enforcement and regulatory agencies regarding violations or possible violations of Bank Secrecy Act, money laundering, tax, and other financial laws when relevant and necessary to obtain information for an investigation or enforcement activity.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) Disclose information to foreign governments in accordance with international agreements.

(9) Disclose information to the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(10) Disclose information to a defendant in a criminal prosecution, the DOJ, or a court of competent jurisdiction when required in criminal discovery or by the Due Process Clause of the Constitution.

(11) Disclose information to appropriate agencies, entities, and persons when (a) the IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic media.

**RETRIEVABILITY:**

By name, address, taxpayer identification number, or other identifying detail (such as telephone, driver license, passport, criminal record, financial account, or professional license numbers) of the subject or an associate of the subject, a witness, or a victim of alleged identity theft or other fraudulent refund or tax scheme; identity of the individual who provided information; name or employee number of the assigned employee(s).

**SAFEGUARDS:**

Access controls are not less than those published in IRM 10.2, Physical Security Program, and IRM 10.8, Information Technology (IT) Security.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the record control schedules applicable to the records of Criminal Investigation, IRM 1.15.30.

**SYSTEM MANAGER AND ADDRESS:**

Chief, Criminal Investigation. (See the Appendix published in the **Federal Register** on August 10, 2012, for address.)

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendix B. Written inquiries should be addressed as stated in the Appendix published in the **Federal Register** on August 10, 2012. This system of records contains records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

**RECORD SOURCE CATEGORIES:**

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Records in this system are exempt from sections (c)(3)–(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.)

[FR Doc. 2014–04947 Filed 3–6–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW]**

## Proposed Information Collection (Bowel and Bladder Care Billing Form) Activity; Comment Request; Withdrawal

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice; withdrawal of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on January 17, 2014, at 79 FR 3276, announcing an opportunity for public comment on the proposed collection of certain information by the agency. The notice solicited comments on information required for National Non-VA Medical Care Program Office to pay eligible caregivers for time spent providing eligible Veterans with specifically defined services such as: bowel and bladder care, showering, shaving, brushing teeth, dressing, transferring to wheelchair, catheterization, undressing, transferring to bed, putting away clothes, etc. With respect to the collection of information in that notice, we are withdrawing our request for comments because of implementation constraints in the use of

the form limiting the ability to operationalize at this time.

This document withdraws the Notices at 78 FR 52824 (August 26, 2013) and 79 FR 3276 (January 17, 2014).

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632–7492.

Dated: March 4, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*Department Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2014–04967 Filed 3–6–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs gives notice under 92 (Federal Advisory Committee Act) that the meeting of the Advisory Committee on Disability Compensation scheduled to be held at VA Central Office, 810 Vermont Avenue NW., Washington, DC on March 3–4, 2014 *has been cancelled.*

For more information, please contact Ms. Nancy Copeland, Designated Federal Officer at (202) 461–9684.

Dated: March 3, 2014.

**Jelessa Burney,**

*Committee Management Officer.*

[FR Doc. 2014–04943 Filed 3–6–14; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 79 Friday,

No. 45 March 7, 2014


Part II

## Department of Homeland Security

6 CFR Part 115

Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; Final Rule

**DEPARTMENT OF HOMELAND SECURITY**

**6 CFR Part 115**

**[ICEB–2012–0003]**

**RIN 1653–AA65**

## Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing regulations setting standards to prevent, detect, and respond to sexual abuse and assault in DHS confinement facilities.

**DATES:** This rule is effective May 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Alexander Y. Hartman, Office of Policy; U.S. Immigration and Customs Enforcement, Department of Homeland Security; Potomac Center North, 500 12th Street SW., Washington, DC 20536; Telephone: (202) 732–4292 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Abbreviations

ANPRM Advance Notice of Proposed Rulemaking
ASR Administrative Stay of Removal
BJS Bureau of Justice Statistics
BOP Bureau of Prisons
CBP U.S. Customs and Border Protection
CDF Contract Detention Facility
CFR Code of Federal Regulations
CMD Custody Management Division
CRCL DHS Office for Civil Rights and Civil Liberties
DHS Department of Homeland Security
DOJ Department of Justice
DSM Detention Service Manager
ERO ICE Enforcement and Removal Operations
FOD ICE Field Office Director
FR Federal Register
FOJC ICE Field Office Juvenile Coordinator
FSA *Flores* v. *Reno* Settlement Agreement
HHS Department of Health and Human Services
HSI ICE Homeland Security Investigations
ICE U.S. Immigration and Customs Enforcement
IGA Intergovernmental Agreement
IGSA Intergovernmental Service Agreement
INA Immigration and Nationality Act
IRFA Initial Regulatory Flexibility Analysis
IRIA Initial Regulatory Impact Analysis
JIC Joint Intake Center
LEP Limited English Proficient/Proficiency
LGBTI Lesbian, Gay, Bisexual, Transgender, Intersex
LGBTIGNC Lesbian, Gay, Bisexual, Transgender, Intersex, Gender Non-conforming
MOU Memorandum of Understanding
NAICS North American Industry Classification System
NDS National Detention Standards
NPREC National Prison Rape Elimination Commission
NPRM Notice of Proposed Rulemaking
ODO ICE Office of Detention Oversight
OIG DHS Office of the Inspector General
OMB Office of Management and Budget
OPR ICE Office of Professional Responsibility
ORR HHS Office of Refugee Resettlement
PBNDS Performance Based National Detention Standards
PRA Paperwork Reduction Act of 1995
PREA Prison Rape Elimination Act of 2003
PSA Prevention of Sexual Assault
QAT Quality Assurance Team
RCA Risk Classification Assessment
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SAAPID Sexual Abuse and Assault Prevention and Intervention Directive
SAFE Sexual Assault Forensic Examiner
SANE Sexual Assault Nurse Examiner
SBA Small Business Administration
SIJ Special Immigrant Juvenile
SPC Service Processing Center
TVPRA Trafficking Victims Protection Reauthorization Act
UMRA Unfunded Mandate Reform Act of 1995
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services
USMS U.S. Marshals Service
VAWA Reauthorization Violence Against Women Reauthorization Act of 2013

### II. Executive Summary

#### *A. Purpose of the Regulatory Action*

The purpose of this regulatory action is to set standards to prevent, detect, and respond to sexual abuse in Department of Homeland Security (DHS) confinement facilities.[1] Sexual violence, against any victim, is an assault on human dignity and an affront to American values. Many victims report persistent, even lifelong mental and physical suffering. As the National Prison Rape Elimination Commission (NPREC) explained in its 2009 report:

> Until recently . . . the public viewed sexual abuse as an inevitable feature of confinement. Even as courts and human rights standards increasingly confirmed that prisoners have the same fundamental rights to safety, dignity, and justice as individuals living at liberty in the community, vulnerable men, women, and children continued to be sexually victimized by other prisoners and corrections staff. Tolerance of sexual abuse of prisoners in the government's custody is totally incompatible with American values.[2]

DHS is committed to preventing, detecting, and responding to sexual abuse in facilities used to detain individuals for civil immigration purposes. Sexual abuse is not an inevitable feature of detention, and with DHS's strong commitment, DHS immigration detention and holding facilities have a culture that promotes safety and refuses to tolerate abuse. DHS is fully committed to its zero-tolerance policy against sexual abuse in its confinement facilities, and these standards will strengthen that policy across DHS confinement facilities. DHS is also fully committed to the full implementation of the standards in DHS confinement facilities, and to robust oversight of these facilities to ensure this implementation.

The standards build on current U.S. Immigration and Customs Enforcement (ICE) Performance Based National Detention Standards (PBNDS) and other DHS detention policies. The standards also respond to the President's May 17, 2012 Memorandum, ''Implementing the Prison Rape Elimination Act,'' which directs all agencies with Federal confinement facilities to work with the Attorney General to create rules or procedures setting standards to prevent, detect, and respond to sexual abuse in confinement facilities, and to the Violence Against Women Reauthorization Act of 2013 (VAWA Reauthorization), which directs DHS to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of aliens detained for a violation of U.S. immigrations laws. *See* Public Law 113–4 (Mar. 7, 2013).

#### *B. Summary of the Provisions of the Regulatory Action*

The DHS provisions span eleven categories that were originally used by the NPREC to discuss and evaluate prison rape elimination standards: Prevention planning, responsive planning, training and education, assessment for risk of sexual victimization and abusiveness, reporting, official response following a detainee[3] report, investigations, discipline, medical and mental care, data collection and review, and audits and compliance. Each provision under these categories reflects the context of DHS confinement of individuals and draws upon the particular experiences

[1] As discussed in greater detail below, in this final rule, ''sexual abuse'' includes sexual abuse and assault of a detainee by another detainee, as well as sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

[2] National Prison Rape Elimination Commission Report 1 (2009), *http://www.ncjrs.gov/pdffiles1/226680.pdf.*

[3] For simplicity, all persons confined in DHS immigration detention facilities and holding facilities are referred to as ''detainees'' in this rulemaking.

and requirements DHS faces in fulfilling its missions.

For example, DHS has broken down the standards to cover two distinct types of facilities: (1) Immigration detention facilities, which are overseen by ICE and used for longer-term detention of aliens in immigration proceedings or awaiting removal from the United States; and (2) holding facilities, which are used by ICE and U.S. Customs and Border Protection (CBP) for temporary administrative detention of individuals pending release from custody or transfer to a court, jail, prison, other agency or other unit of the facility or agency.

In addition, the standards reflect the characteristics of the population encountered by DHS in carrying out its border security and immigration enforcement missions by providing, for example, language assistance services for limited English proficient (LEP) detainees, safe detention of family units, and other provisions specific to DHS's needs. A more detailed discussion of all of the provisions in the rulemaking is included below in Section V of this preamble, ''Discussion of PREA Standards,'' including a section-by-section analysis of the DHS rule.

In this final rule, DHS has modified the proposed regulatory text in multiple areas, including the following:

- In addition to implementing these standards at both DHS facilities and at non-DHS facilities whenever there is a new contract or contract renewal, DHS will also implement the standards at non-DHS facilities whenever there is a substantive contract modification.
- In addition to requiring that assessments for risk of victimization or abusiveness include an evaluation of whether the detainee has been incarcerated previously, DHS is now also requiring consideration of whether the detainee has been detained previously.
- DHS now requires immigration detention facilities to notify a regional ICE supervisor no later than 72 hours after the initial placement into segregation whenever a detainee has been held in administrative segregation on the basis of a vulnerability to sexual abuse or assault. Upon receipt of such notification, the official must conduct a review of the placement to consider whether continued segregation is warranted, whether any less restrictive housing or custodial alternatives may exist (such as placing the detainee in a less restrictive housing option at another facility or other appropriate custodial options), and whether the placement is only as a last resort and when no other viable housing options exist.
- DHS now requires immigration detention facilities to notify a regional ICE supervisor whenever a detainee victim has been held in administrative segregation for longer than 72 hours. Upon receipt of such notification, the official must conduct a review of the placement to consider whether placement is only as a last resort and when no other viable housing options exist, and, in cases where the detainee victim has been held in segregation for longer than five days, whether the placement is justified by extraordinary circumstances or is at the request of the detainee.
- DHS is now requiring immigration detention facilities to complete sexual abuse incident reviews within 30 days of the completion of the investigation, and is requiring that the review include consideration of whether the incident or allegation was motivated by, among other things, sexual orientation or gender identity.
- DHS is now requiring explicitly that facilities keep data collected on sexual abuse and assault incidents in a secure location.
- DHS is now requiring that the agency maintain sexual abuse data for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

DHS has also modified the regulatory text and clarified its interpretation of the rule in a number of ways, as explained more fully below.

*C. Costs and Benefits*

The anticipated costs of full nationwide compliance with the rule as well as the benefits of reducing the prevalence of sexual abuse in DHS immigration detention facilities and holding facilities, are discussed at length in section VI, entitled ''Statutory and Regulatory Requirements—Executive Orders 12866 and 13563'' and in the accompanying Regulatory Impact Analysis (RIA), which is found in the docket for this rulemaking.

As shown in the Summary Table below, DHS estimates that the full cost of compliance with these standards at all covered DHS confinement facilities would be approximately $57.4 million over the period 2013–2022, discounted at 7 percent, or $8.2 million per year when annualized at a 7 percent discount rate. This is the estimated cost of compliance if all facilities adopt and implement the standards within the first year after the rule is finalized. This is an accurate reflection of implementation of these standards in holding facilities, which are fully owned and operated by DHS agencies. However, the annual cost for implementation at immigration detention facilities, most of which are governed by a contract with another entity, will likely be less, because it depends on the pace of contract renewals and substantive modifications which are unlikely to be universally completed in the first year after the rule is finalized. DHS has not endeavored in the RIA to project the actual pace of implementation.

With respect to benefits, DHS conducts what is known as a ''break even analysis,'' by first estimating the monetary value of preventing various types of sexual abuse (incidents involving violence, inappropriate touching, or a range of other behaviors) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of compliance. This analysis begins by estimating the recent levels of sexual abuse in covered facilities using data from 2010, 2011, and 2012. In 2010, ICE had four substantiated sexual abuse allegations in immigration detention facilities, two in 2011, and one in 2012. There were no substantiated allegations by individuals detained in a DHS holding facility. (This does not include allegations involved in still-open investigations or allegations outside the scope of these regulations.) In the RIA, DHS extrapolates the number of substantiated and unsubstantiated allegations at immigration detention facilities based on the premise that there may be additional detainees who may have experienced sexual abuse, but did not report it.

Next, DHS estimates how much monetary benefit (to the victim and to society) accrues from reducing the annual number of victims of sexual abuse. This is, of course, an imperfect endeavor, given the inherent difficulty in assigning a dollar figure to the cost of such an event. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify, and directs agencies to use the best available techniques to quantify benefits and costs. Executive Order 13563 also states that agencies ''may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' Each of these values is relevant here, including human dignity, which is offended by acts of sexual abuse.

DHS uses the Department of Justice (DOJ) estimates of unit avoidance values for sexual abuse, which DOJ extrapolated from the existing economic and criminological literature regarding

rape in the community.[4] The RIA concludes that when all facilities and costs are phased into the rulemaking, the breakeven point would be reached if the standards reduced the annual number of incidents of sexual abuse by 122 from the estimated benchmark levels, which is 147 percent of the total number of assumed incidents in ICE confinement facilities, including an estimated number of those who may not have reported an incident.[5]

There are additional benefits of the rule that DHS is unable to monetize or quantify. Not only will victims benefit from a potential reduction in sexual abuse in facilities, so too will DHS agencies and staff, other detainees, and society as a whole. As noted by Congress, sexual abuse increases the levels of violence within facilities. Both staff and other detainees will benefit from a potential reduction in levels of violence and other negative factors. 42 U.S.C. 15601(14). This will improve the safety of the environment for other detainees and workplace for facility staff. In addition, long-term trauma from sexual abuse in confinement may diminish a victim's ability to reenter society resulting in unstable employment. Preventing these incidents will decrease the cost of health care, spread of disease, and the amount of public assistance benefits required for victims upon reentry into society, whether such reentry is in the United States or a detainee's home country.

Chapter 3 of the RIA presents detailed descriptions of the monetized benefits and break-even results. The Summary Table, below, presents a summary of the benefits and costs of the final rule. The costs are discounted at seven percent.

SUMMARY TABLE—ESTIMATED COSTS AND BENEFITS OF FINAL RULE

[$Millions]

| | Immigration detention facilities | Holding facilities | Total DHS PREA rulemaking |
|---|---|---|---|
| 10-Year Cost Annualized at 7% Discount Rate | $4.9 | $3.3 | $8.2 |
| % Reduction of Sexual Abuse Victims to Break Even With Monetized Costs | N/A | N/A | *147% |
| Non-monetized Benefits | An increase in the general wellbeing and morale of detainees and staff, the value of equity, human dignity, and fairness for detainees in DHS custody. | | |
| Net Benefits | As explained above, we did not estimate the number of incidents or victims of sexual abuse this rule would prevent. Instead, we conducted a breakeven analysis. Therefore, we did not estimate the net benefits of this rule. | | |

* For ICE confinement facilities.

## III. Background

Rape is violent, destructive, and a crime, no matter where it takes place. In response to concerns related to incidents of rape of prisoners in Federal, State, and local prisons and jails, as well as the lack of data available about such incidents, the Prison Rape Elimination Act (PREA) was enacted in September 2003. *See* Public Law 108–79 (Sept. 4, 2003). Some of the key purposes of the statute were to ''develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape,'' and to ''increase the available data and information on the incidence of prison rape.'' 42 U.S.C. 15602(3), (4).

To accomplish these ends, PREA established the National Prison Rape Elimination Commission (NPREC) to conduct a ''comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States,'' and to recommend national standards for the reduction of prison rape. 42 U.S.C. 15606(d). PREA charged the Attorney General, within one year of NPREC issuing its report, to ''publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape . . . based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by [NPREC] . . . and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' 42 U.S.C. 15607(a)(1)–(2).

The NPREC released its findings and recommended national standards in a report (the NPREC report) dated June 23, 2009. The report is available at *http://www.ncjrs.gov/pdffiles1/226680.pdf.* In that report, NPREC set forth four sets of recommended national standards for eliminating prison rape and other forms of sexual abuse. Each set was applicable to one of four confinement settings: (1) Adult prisons and jails; (2) lockups; (3) juvenile facilities; and (4) community corrections facilities. NPREC report at 215–235. The NPREC report recommends supplemental standards for facilities with immigration detainees. *Id.* at 219–220. Specifically, and of particular interest to DHS, the NPREC made eleven recommendations for supplemental standards for facilities with immigration detainees and four recommendations for supplemental standards for family facilities. NPREC asserted that standards for facilities with immigrant detainees must be enforced in any facility that is run by ICE or through an ICE contract.

### *A. Department of Justice Rulemaking*

In response to the NPREC report, a DOJ PREA Working Group reviewed the NPREC's proposed standards to assist in the rulemaking process. DOJ published an advance notice of proposed rulemaking (ANPRM) on March 10, 2010 (75 FR 11077). Commenters on the ANPRM generally supported the broad goals of PREA and the overall intent of the NPREC's recommendations, with some division over the merits of a number of the NPREC's recommended national standards.

[4] Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape, Final Rule, Final Regulatory Impact Analysis, Docket No. DOJ–OAG–2011–0002, *available at www.regulations.gov.*

[5] As discussed in Chapter 1, and shown in Table 17 of the RIA, the benchmark level of sexual abuse includes all types of sexual abuse, including offensive touching (for instance, during a pat-down search), voyeurism, harassment, and verbal abuse.

DOJ then issued a notice of proposed rulemaking (NPRM) on February 3, 2011, setting forth proposed national PREA standards. 76 FR 6248 (Feb. 3, 2011). In response to the NPRM, DOJ received over 1,300 comments that provided general assessments of DOJ's efforts as well as specific and detailed recommendations regarding each standard. Pertinent to DHS, there was specific concern expressed by the commenters with respect to NPREC's recommended supplemental standards for immigration detention number six, which proposed to mandate that immigration detainees be housed separately from criminal detainees. The DOJ NPRM noted that several comments to the DOJ ANPRM raised a concern that this requirement would impose a significant burden on jails and prisons, which often do not have the capacity to house immigration detainees and criminal detainees separately. *Id.* The DOJ NPRM also noted DOJ's concern about other proposed supplemental standards, such as imposing separate training requirements and requiring agencies to attempt to enter into separate memoranda of understanding with immigration-specific community service providers. *Id.* Furthermore, comments to the DOJ NPRM addressed whether the proposed standards should cover immigration detention facilities, prompting DOJ to examine the application of PREA to other Federal confinement facilities, which is discussed further below.

Following the public comment period for its NPRM, DOJ issued a final rule setting a national framework of standards to prevent, detect, and respond to prison rape at DOJ confinement facilities, as well as State prisons and local jails. 77 FR 37106 (June 20, 2012).

*B. Application of PREA Standards to Other Federal Confinement Facilities*

DOJ's NPRM interpreted PREA to bind only facilities operated by the Bureau of Prisons (BOP), and extended the standards to U.S. Marshals Service (USMS) facilities under other authorities of the Attorney General. 76 FR 6248, 6265. Numerous commenters criticized this interpretation of the statute. In light of those comments, DOJ re-examined whether PREA extends to Federal facilities beyond those operated by DOJ and concluded that PREA does, in fact, encompass any Federal confinement facility ''whether administered by [the] government or by a private organization on behalf of such government.'' 42 U.S.C. 15609(7).

In its final rule, DOJ further concluded that, in general, each Federal department is accountable for, and has statutory authority to regulate, the operations of its own facilities and, therefore, is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. 77 FR 37106, 37113. In particular, DOJ noted that DHS possesses great knowledge and experience regarding the specific characteristics of its immigration facilities, which differ in certain respects from DOJ, State, and local facilities with regard to the manner in which they are operated and the composition of their populations. Thus, and given each department's various statutory authorities to regulate conditions of detention, DOJ stated that Federal departments with confinement facilities, like DHS, would work with the Attorney General to issue rules or procedures consistent with PREA.

*C. The Presidential Memorandum on Implementing the Prison Rape Elimination Act and the Violence Against Women Reauthorization Act of 2013*

On May 17, 2012, the same day DOJ released its final rule, President Obama issued a Presidential Memorandum reiterating the goals of PREA and directing Federal agencies with confinement facilities that are not already subject to the DOJ final rule to propose rules or procedures necessary to satisfy the requirements of PREA within 120 days of the Memorandum. In the Memorandum, the President firmly establishes that sexual violence, against any victim, is an assault on human dignity and an affront to American values, and that PREA established a ''zero-tolerance standard'' for rape in prisons in the United States. The Memorandum further expresses the Administration's conclusion that PREA encompasses all Federal confinement facilities, including those operated by executive departments and agencies other than DOJ, whether administered by the Federal Government or by an organization on behalf of the Federal Government, and that each agency is responsible for, and must be accountable for, the operations of its own confinement facilities. The President charged each agency, within the agency's own expertise, to determine how to implement the Federal laws and rules that govern its own operations, but to ensure that all agencies that operate confinement facilities adopt high standards to prevent, detect, and respond to sexual abuse. The President directed all agencies with Federal confinement facilities that are not already subject to the DOJ final rule, such as DHS, to work with the Attorney General to propose rules or procedures that will satisfy the requirements of PREA.

Additionally, on March 7, 2013, the VAWA Reauthorization was enacted, which included a section addressing sexual abuse in custodial settings. *See* Public Law 113–4 (Mar. 7, 2013). Among requirements addressing certain Federal agencies, the law directs DHS to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of aliens detained for a violation of U.S. immigrations laws. *Id.* The standards are to apply to DHS-operated detention facilities and to detention facilities operated under contract with DHS, including contract detention facilities (CDFs) and detention facilities operated through an intergovernmental service agreement (IGSA) with DHS. *Id.* The statute requires that the DHS standards give due consideration to the recommended national standards provided by NPREC. *Id.*

Sexual abuse in custodial environments is a serious concern with dire consequences for victims. DHS is firmly committed to protecting detainees from all forms of sexual abuse. By this regulation, DHS responds to and fulfills the President's directive and the requirements of the VAWA Reauthorization by creating comprehensive, national regulations for the detection, prevention, and reduction of sexual abuse at DHS immigration detention facilities and at DHS holding facilities that maintain custody of aliens detained for violating U.S. immigration laws.

*D. DHS Proposed Rule and Public Comments*

On December 19, 2012, DHS published an NPRM entitled *Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; Proposed Rule.* 77 FR 75300. On January 2, 2013 DHS published an Initial Regulatory Impact Analysis (IRIA), which presented a comprehensive assessment of the benefits and costs of DHS's proposed standards in both quantitative and qualitative terms. The IRIA was summarized in the proposed rule and was published in full in the docket (ICEB–2012–003) on the regulations.gov Web site. The public comment period on the NPRM originally was scheduled to end on February 19, 2013. Due to scheduled maintenance to the Federal

eRulemaking Portal, DHS extended the comment period by one week until February 26, 2013. 78 FR 8987. DHS received a total of 1,724 comments on the proposed rule. No public meeting was requested, and none was held.

Commenters included private citizens, professional organizations, social service providers, and advocacy organizations concerned with issues involving detainee safety and rights, sexual violence, discrimination, and the mental health of both the detainees and the facility employees. In general, commenters supported the goals of PREA and DHS's proposed rule. However, some commenters, particularly advocacy groups concerned with protecting the health and safety of the detainees, expressed concern that the proposed rule did not go far enough towards achieving the goals that PREA set forth. Some comments were outside the scope of the proposed rule, and therefore have not been included in the DHS responses and changes in the final rule below. DHS thanks the public for its interest and participation.

Members of Congress and others have also expressed interest in this rulemaking. In describing the potential positive impacts of the VAWA Reauthorization, Senator Richard Durbin—both a PREA and VAWA Reauthorization legislative co-sponsor—referred to the importance of the bill's provision regarding implementation of PREA standards by DHS. Specifically, Senator Durbin applauded DHS's efforts, through its proposed rule, to implement rules consistent with PREA's goals. 159 Cong. Rec. S503 (daily ed. Feb. 7, 2013) (statement of Sen. Durbin). Senator Durbin noted that, ''It was critical . . . to have a provision in this VAWA Reauthorization that clarifies that standards to prevent custodial rape must apply to immigration detainees—all immigration detainees—a provision that codifies the good work DHS is now doing and ensures strong regulations pertaining to immigration will remain in place in the future.'' *Id.* DHS appreciates this strong statement of confidence in DHS's proposed rule, by a legislator who advocated for the original PREA legislation.

When the public comment period closed, DHS carefully reviewed each comment and deliberated internally on the revisions that the commenters proposed.

*E. Types of DHS Confinement Facilities*

This rule applies to just two types of confinement facilities: (1) Immigration detention facilities and (2) holding facilities.

Section 115.5 defines an immigration detention facility as a ''confinement facility operated by or pursuant to contract with [ICE] that routinely holds persons for over 24 hours pending resolution or completion of immigration removal operations or processes, including facilities that are operated by ICE, facilities that provide detention services under a contract awarded by ICE, or facilities used by ICE pursuant to an Intergovernmental Service Agreement.'' These facilities are designed for long-term detention (more than 24 hours) and house the largest number of DHS detainees. ICE is the only DHS component agency with immigration detention facilities, and it has several types of such facilities: Service processing center (SPC) facilities are ICE-owned facilities staffed by a combination of Federal employees and contract staff; CDFs are owned by private companies and contracted directly with ICE; and detention services at IGSA facilities are provided to ICE by States or local governments through agreements and may be owned by the State or local government, or a private entity.[6] There are two types of IGSA facilities: Dedicated IGSA facilities, which house detained aliens only, and non-dedicated (i.e., shared) IGSA facilities, which may house a variety of detainees and inmates.

The standards set forth in Subpart A of these proposed regulations are meant ultimately to apply to all of these various types of immigration detention facilities—but not, notably, to facilities authorized for use by ICE pursuant to agreements with BOP or pursuant to agreements between DOJ and state or local governments or private entities (e.g., USMS IGA facilities). Those facilities and their immigration detainees are covered by the DOJ PREA standards and not the provisions within Subpart A of these proposed rules.

These regulations do not apply to CDF and IGSA facilities directly; rather, standards for these facilities will be phased in through new contracts, contract renewals, or substantive contract modifications. Specifically, the regulations require that when contracting for the confinement of detainees in immigration detention facilities operated by non-DHS private or public agencies or other entities, DHS component agencies include in any new contracts, contract renewals, or substantive contract modifications the obligation to adopt and comply with these standards. (Covered substantive contract modifications would include, for example, changes to the bed/day rate or the implementation of stricter standards, but not the designation of a new Contracting Officer.) In other words, DHS intends to enforce the standards though terms in its contracts with facilities.

Section 115.5 defines a holding facility similarly to DOJ's definition of ''lockup.'' A ''holding facility'' is a facility that contains holding cells, cell blocks, or other secure enclosures that are: (1) Under the control of the agency; and (2) primarily used for the short-term confinement of individuals who have recently been detained pending release or transfer to or from a court, jail, prison, or other agency. These facilities, which are operated by ICE, CBP, or other DHS components, are designed for confinement that is short-term in nature, but are permanent structures intended primarily for the purpose of such confinement. Temporary-use hold rooms and other types of short-term confinement areas not primarily used for confinement are not amenable to compliance with these standards, but are covered by other DHS policies and procedures. We discuss the distinctions between these facilities in more detail later in this rule.

1. ICE Detention Facilities

As stated above, the NPREC report contained eleven recommended standards for facilities with immigration detainees and four recommended standards specifically addressing family facilities. ICE oversees immigration detention facilities nationwide. The vast majority of facilities are operated through government contracts, State and local entities, private entities, or other Federal agencies. ICE Enforcement and Removal Operations (ERO) is the program within ICE that manages ICE operations related to the immigration detention system.

ERO is responsible for providing adequate and appropriate custody management to support the immigration removal process. This includes providing traditional and alternative custody arrangements for those in removal proceedings, providing aliens access to legal resources and representatives of advocacy groups, and facilitating the appearance of detained aliens at immigration court hearings.

[6] In the preamble of the proposed rule, DHS listed Intergovernmental Agreement (IGA) facilities among the types of immigration detention facilities. Upon further review, DHS has determined that ICE does not contract with state or local governments using IGAs, and therefore has no immigration detention facilities that qualify as IGAs (as opposed to IGSAs). As discussed in greater detail below, although ICE is an authorized user of USMS IGA facilities, the facilities and their immigration detainees would be covered by the DOJ PREA standards and not the provisions within Subpart A of these proposed rules.

Through various immigration detention reform initiatives, ERO is committed to providing and maintaining appropriate conditions of confinement, providing required medical and mental healthcare, housing detainees in the least restrictive setting commensurate with their criminal background, ensuring appropriate conditions for all detainees, employing fiscal accountability, increasing transparency, and strengthening critical oversight, including efforts to ensure compliance with applicable detention standards through inspection programs.

The ERO Custody Management Division (CMD) provides policy and oversight for the administrative custody of immigration detainees, a highly transient population and one of the most diverse of any correctional or detention system in the world. CMD's mission is to manage ICE detention operations efficiently and effectively to provide for the safety, security and care of aliens in ERO custody.

As of spring 2012, ERO was responsible for providing custody management to approximately 158 authorized immigration detention facilities, consisting of 6 SPCs, 7 CDFs, 9 dedicated IGSA facilities, and 136 non-dedicated IGSA facilities (of which 64 are covered by the DOJ PREA rule, not this rule, because they are USMS IGA facilities). ERO has 91 other authorized immigration detention facilities that typically hold detainees for more than 24 hours and less than 72 hours, including 55 USMS IGA facilities and 36 non-dedicated IGSA facilities. In addition, ICE has 149 holding facilities that hold detainees for less than 24 hours. These holding facilities are nationwide and are located within ICE ERO Field and Sub-Field Offices.[7]

2. ICE Sexual Abuse and Assault Policies

These regulations for immigration detention facilities and holding facilities support existing sexual abuse policies promulgated by ICE, including ICE's PBNDS 2011 and its 2012 Sexual Abuse and Assault Prevention and Intervention Directive (SAAPID),[8] which provide strong safeguards against all sexual abuse of individuals within its custody, consistent with the goals of PREA.

ICE's PBNDS 2011 standard on ''Sexual Abuse and Assault Prevention and Intervention'' was developed in order to enhance protections for immigration detainees as well as ensure a swift and effective response to allegations of sexual abuse. This standard derived in significant part from earlier policies contained in ICE's PBNDS 2008, promulgated in response to the passage of PREA, and took into consideration the subsequently released recommendations of the NPREC (including those for facilities housing immigration detainees) in June 2009 and ensuing draft standards later issued by DOJ in its ANPRM in March 2010. In drafting the PBNDS 2011, ICE also incorporated the input of the DHS Office for Civil Rights and Civil Liberties (CRCL), local and national advocacy organizations, and representatives of DOJ (including correctional experts from BOP) on methods for accomplishing the objectives of PREA in ICE's operational context, and closely consulted information and best practices reflected in policies of international corrections systems, statistical data on sexual violence collected by the DOJ Bureau of Justice Statistics (BJS), and reports published by the United Nations High Commissioner for Refugees and the Inter-American Commission on Human Rights of the Organization of American States regarding sexual abuse and other issues affecting vulnerable populations in U.S. correctional systems. The PBNDS 2011 establish responsibilities of all immigration detention facility staff with respect to preventative measures such as screening, staff training, and detainee education, as well as effective response to all incidents of sexual abuse, including timely reporting and notification, protection of victims, provision of medical and mental health care, investigation, and monitoring of incident data.

The PBNDS 2008 standard on Sexual Abuse and Assault Prevention and Intervention and the Family Residential Standards also contain robust safeguards against sexual abuse of ICE detainees, establishing similar requirements with respect to each of the issues covered by the PBNDS 2011 Sexual Abuse standard. In addition, ICE has made great strides in incorporating standards specific to sexual abuse and assault in NDS facilities. In fact, since the publication of the NPRM a substantial number of NDS facilities with which ICE maintains IGSAs have agreed to implement the PBNDS 2011's Sexual Abuse and Assault Prevention and Intervention standard. Excluding those detainees who are held in DOJ-contracted facilities (and are therefore covered by the DOJ rule), as of July 2013 approximately 94% of ICE detainees, on average, are housed in facilities that have adopted a sexual abuse and assault standard under PBNDS 2011, PBNDS 2008, or Family Residential Standards.[9]

The 2012 ICE SAAPID complements the requirements established by the detention standards by delineating ICE-wide policy and procedures and corresponding duties of employees for reporting, responding to, investigating, and monitoring incidents of sexual abuse. Regardless of the standards applicable to a particular facility, ICE personnel are required under this Directive to ensure that the substantive response requirements of PBNDS 2011 are met, and that incidents receive timely and coordinated agency follow-up. In conjunction with the PBNDS, the SAAPID ensures an integrated and comprehensive system of preventing and responding to all incidents or allegations of sexual abuse of individuals in ICE custody.

On September 4, 2013, ICE issued a directive entitled ''Review of the Use of Segregation for ICE Detainees.'' The directive establishes policy and procedures for ICE review of detainees placed into segregated housing. It is intended to complement the requirements of the 2011 PBNDS, the 2008 PBNDS, NDS and other applicable policies. The directive states that placement in segregation should occur only when necessary and in compliance with applicable detention standards, and includes a notification requirement whenever a detainee has been held continuously in segregation for 14 days out of any 21 day period and a 72-hour notification requirement for detainees placed in segregation due to a special vulnerability, including for detainees susceptible to harm due to sexual orientation or gender identity, and detainees who have been victims—in or

[7] Facilities ICE used as of spring 2012, and the sexual abuse and assault standards to which facilities were held accountable or planned to be held accountable at that time, serve as the baseline for the cost estimates for this rulemaking.

[8] ICE, *Performance-Based National Detention Standards* (2011), *http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf*; ICE, *Directive No. 11062.1: Sexual Abuse and Assault Prevention and Intervention* (2012), *http://www.ice.gov/doclib/foia/dro_policy_memos/sexual-abuse-assault-prevention-intervention-policy.pdf*. These documents are available, redacted as appropriate, in the docket for this rule where indicated under **ADDRESSES.**

[9] Less than one-third of ICE's average detainee population is currently housed in facilities governed by the agency's 2000 National Detention Standards (NDS), which does not contain a standard specific to sexual abuse prevention and intervention—and nearly half of those detainees are in USMS IGA facilities. A substantial number of NDS facilities with which ICE maintains an IGSA have agreed to implement the PBNDS 2011's Sexual Abuse and Assault Prevention and Intervention standard. Again excluding detainees who are held in DOJ-contracted facilities (and are therefore covered by the DOJ PREA rule), as of July 2013, nearly three quarters of ICE detainees housed in NDS IGSA facilities are covered by the PBNDS 2011 sexual abuse and assault standard. For more information on the standards applicable to DOJ facilities, see the discussion *infra*.

out of ICE custody—of sexual assault, torture, trafficking, or abuse.

ICE's combined policies prescribe a comprehensive range of protections against sexual abuse, addressing prevention planning, reporting, response and intervention, investigation, and oversight, including: Articulation of facility zero-tolerance policies; designation of facility and component sexual assault coordinators; screening and classification of detainees; staff training; detainee education; detainee reporting methods; staff reporting and notification; first responder duties following incidents or allegations of sexual abuse (including to protect victims and preserve evidence); emergency and ongoing medical and mental health services; investigation procedures and coordination; discipline of assailants; and sexual abuse incident data collection and review.

These policies are tailored to the particular operational and logistical circumstances encountered in the DHS confinement system in order to maximize the effective achievement of the goals of PREA within the immigration detention context. To further improve transparency and enforcement, DHS has decided to issue this regulation and adopt the overall structure of the DOJ standards, as well as the wholesale text of various individual DOJ standards where DHS has deemed them appropriate and efficacious, to meet the President's goal of setting high standards, government-wide, consistent with the goals of PREA and Congress's expressed intent that DHS adopt national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in immigration confinement settings. Where appropriate, DHS also has used the results of DOJ research and considered public comments submitted in response to the DOJ ANPRM and NPRM in formulating the DHS standards.

3. U.S. Customs and Border Protection Holding Facilities

CBP has a priority mission of keeping terrorists and their weapons out of the United States. CBP also is responsible for securing and facilitating trade and travel while enforcing hundreds of U.S. statutes and regulations, including immigration and drug laws. All persons, baggage, and other merchandise arriving in or leaving the United States are subject to inspection and search by CBP officials for a number of reasons relating to its immigration, customs, and other law enforcement activities.

CBP detains individuals in a wide range of facilities. CBP detains some individuals in secured detention areas, while others are detained in open seating areas where agents or officers interact with the detainee. CBP uses ''hold rooms'' in its facilities for case processing and to search, detain, or interview persons who are being processed. CBP does not currently contract for law enforcement staff within its holding facilities; CBP employees oversee detainees directly.

CBP generally detains individuals for only the short time necessary for inspection and processing, including pending release or transfer of custody to appropriate agencies. Some examples of situations in which CBP detains individuals prior to transferring them to other agencies are: (1) Persons processed for administrative immigration violations may, for example, be repatriated to a contiguous territory or transferred to ICE pending removal from the United States or removal proceedings with the Executive Office of Immigration Review; (2) unaccompanied alien children placed in removal proceedings under § 240 of the Immigration and Nationality Act (INA), 8 U.S.C. 1229a, are transferred, in coordination with ICE, to the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR); and (3) persons detained for criminal prosecution are temporarily held pending case processing and transfer to other Federal, State, local or tribal law enforcement agencies. CBP policies and directives currently cover these and other detention scenarios.

4. CBP Detention Directives and Guidance

The various CBP policies and directives containing guidance on the topics addressed in these regulations include, but are not limited to:

*Personal Search Handbook,* Office of Field Operations, CIS HB 3300–04B, July 2004—describes in detail the procedures for personal searches. The handbook further explains the procedures for transportation and detention of, and reporting procedures for, persons detained for prolonged medical examinations as well as detentions lasting more than two hours.

CBP Directive No. 3340–030B, *Secure Detention, Transport and Escort Procedures at Ports of Entry*—establishes CBP's policy for the temporary detention, transport, and escort of persons by the Office of Field Operations. The policy also provides guidance on issues regarding the detention of juveniles, medical situations, meals, water, restrooms, phone notifications, sanitation of the hold room, restraining procedures, classification of detainees, transportation, emergency procedures, escort procedures, transfer procedures, and property disposition.

U.S. Border Patrol Policy No. 08–11267, *Hold Rooms and Short-Term Custody*—establishes national policy describing the responsibilities and procedures for the short-term custody of persons in Border Patrol hold rooms pending case disposition. The policy also contains requirements regarding the handling of juveniles in Border Patrol custody.

DHS referenced all of these policies in its consideration of DHS-wide standards to prevent, detect, and respond to sexual abuse in DHS confinement facilities. The policies are available, redacted as appropriate, in the docket for this rule at *www.regulations.gov*.

## IV. Discussion of PREA Standards

### *A. DHS's PREA Standards*

With this final rule, DHS reiterates that sexual violence against any victim is an assault on human dignity. Such acts are particularly damaging in the detention environment, where the power dynamic is heavily skewed against victims and recourse is often limited. Until recently, however, this has been viewed by some as an inevitable aspect of detention within the United States. This view is not only incorrect but incompatible with American values.

As noted in the NPRM, DHS keeps records of any known or alleged sexual abuse incidents in its facilities. DHS reiterates that the allegations that have been tracked are unacceptable, both to DHS and the Administration, which has articulated a ''zero-tolerance'' standard for sexual abuse in confinement facilities. Accordingly, DHS continues to work to achieve its mandate to eliminate all such incidents.

With respect to this rule, DHS did not begin its work from a blank slate. Many correctional administrators have developed and implemented policies and practices to more effectively prevent and respond to sexual abuse in confinement facilities, including DHS confinement facilities. DHS applauds these efforts, and views them as an excellent first step. However, as noted in the NPRM, DHS has decided to promulgate regulations to meet PREA's goals and comply with the President's directive that can be applied effectively to all covered facilities in light of their particular physical characteristics, the nature of their diverse populations, and resource constraints.

DHS appreciates the considerable work DOJ has done in this area, and also recognizes that each DHS component has extensive expertise regarding its own facilities, particularly those housing unique populations, and that each DHS component is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. Thus DHS, because of its own unique circumstances, has adopted the overall structure of DOJ's regulations and has used its content to inform the provisions of the NPRM and this final rule, but has tailored individual provisions to maximize their efficacy in DHS confinement facilities.

DHS also reemphasizes that these standards are not intended to establish a safe harbor for otherwise constitutionally-deficient conditions regarding detainee sexual abuse. Likewise, while the DHS standards aim to include a variety of best practices due to the need to adopt standards applicable to a wide range of facilities while accounting for costs of implementation, the standards do not incorporate every promising avenue of combating sexual abuse. The standards represent policies and practices that are attainable by DHS components and their contractors, while recognizing that other DHS policies and procedures can, and in some cases currently do, exceed these standards in a variety of ways. DHS applauds such efforts, and encourages its components and contractors to further support the identification and adoption of additional innovative methods to protect detainees from sexual abuse.

*B. Section by Section Analysis*

The DHS rule follows the DOJ rule in devising separate sets of standards tailored to different types of confinement facilities utilized by DHS: Immigration detention facilities and holding facilities. Each set of standards consists of the same eleven categories used by the DOJ rule: Prevention planning, responsive planning, training and education, assessment for risk of sexual victimization and abusiveness, reporting, official response following a detainee report, investigations, discipline, medical and mental care, data collection and review, and audits and compliance. As in the DOJ rule, a General Definitions section applicable to both sets of standards is provided.

**General Definitions (§ 115.5)**

Sections 115.5 and 115.6 provide definitions for key terms used in the standards, including definitions related to sexual abuse. The definitions in this section largely mirror those used in the DOJ rule, with adjustments as necessary for DHS operational contexts. DHS has also largely relied on the NPREC's definitions in the Glossary sections that accompanied the NPREC's four sets of standards, but has made a variety of adjustments and has eliminated definitions for various terms that either do not appear in the DHS standards or whose meaning is sufficiently clear so as not to need defining.

*Facility, holding facility—transportation.* Numerous commenters, including advocacy groups and former Commissioners of NPREC, questioned this definition of facility, noting that it did not extend to custodial transport, when detainees are in transit between facilities. An advocacy group stated that the transfer of detainees, either between facilities or to facilitate removal, is a common aspect of immigration detention, necessitating clear inclusion of PREA protections during these situations. Another advocacy group stated that detainees are vulnerable when being transported and that, unlike within the DOJ system, facility staff regularly transport immigration detainees. One organization stated that definitions for both facility and holding facility should explicitly include transportation settings to provide for zero tolerance of abuse in such situations, with some groups stating that such definitions should include the language in PBNDS § 1.3 that addresses transportation.

DHS has considered these comments and decided to adopt the scope of the proposed rule—immigration detention facilities and holding facilities. DHS notes that some standards indirectly cover custodial transport. For example, the DHS standards cover all staff conduct, including staff and employee conduct while transporting detainees.

In addition, DHS has addressed custodial transport in numerous other contexts. The written zero tolerance policy applies to all forms of sexual abuse and assault by agency employees and contractors. This policy applies to transport of detainees in DHS custody to and from holding facilities and immigration detention facilities, between a holding facility and a detention facility, and to custodial transport for the purposes of removal. Moreover, the ICE SAAPID provides protection for all detainees when they are in ICE custody, including custodial transport. And whenever DHS is alerted to an alleged incident of sexual abuse and assault during DHS transport to or from a holding facility or immigration detention facility or during DHS custodial transport for the purposes of removal, such allegations are required to be documented and promptly reported to the Joint Intake Center (JIC) and the PSA Coordinator, and will promptly receive appropriate follow-up, including a sexual abuse incident review at the conclusion of the investigation by the appropriate investigative authorities. In situations involving transportation between a holding facility maintained by one DHS component and an immigration detention facility maintained by another component, the Prevention of Sexual Assault (PSA) Coordinators at each component will be responsible for addressing the allegation in their respective annual reports.

By including explicit references to such custodial transportation in its policies, DHS reaffirms its commitment to preventing, detecting, and responding to sexual abuse and assault against individuals detained in DHS custody. Consistent with DOJ's approach, however, DHS declines to include additional separate standards on transportation.

One advocacy group, basing its comment on ICE standards under PBNDS, suggested a separate section in the final rule addressing transportation that would require that two transportation staff members be assigned to transport a single detainee, including at least one staff member of the same gender as the detainee, except in exigent circumstances. The suggested standards would specify similar requirements for multiple-detainee transit, provide detailed timekeeping accountability guidelines for exigent circumstances situations, provide documentation requirements when aberrations from the above suggestions occur, and provide separate rules for conduct and documentation requirements of pat-downs during transportation. The group also suggested the standards require minors to be separated from unrelated adults at all times during transport, seated in an area of the vehicle near officers, and remain under their close supervision. Additionally, the commenter suggested detainees of different genders be transported separately—or, if in one vehicle, in separately partitioned areas—with transgender detainees being transported in a manner corresponding to their gender identity.

As noted above, DHS recognizes the importance of protecting detainees in all custodial settings, including during transport. For this reason, and as noted by the commenters, ICE has promulgated, and is currently in the process of implementing, 2011 PBNDS, which provides greater protection for

detainees being transported while in ICE custody. These detention standards include a number of the protections recommended by the commenter, as do—to a lesser extent—the PBNDS 2008 and NDS. As noted above, detainees in ICE custody are also protected by DHS's zero-tolerance policy, ICE's zero-tolerance policy and ICE's SAAPID which prohibits sexual abuse and assault by any ICE employee in any custodial setting. CBP detainees are protected under DHS's zero-tolerance policy and other policies, including CBP Directive No. 3340–030B, Secure Detention, Transport and Escort Procedures at Ports of Entry.

Following careful review, DHS determined that the combination of generally applicable provisions of this final rule and other existing policies address the commenters' concerns in an effective and operationally practicable way. Therefore, DHS has decided not to add specific transportation standards to the regulation and instead, relies on existing policies and guidelines which provide for detainee protection.

*Facility, holding facility—temporary-use holding rooms.* Former Commissioners of NPREC and some advocacy groups recommended that DHS extend the definition of holding facility to include temporary-use holding rooms not in immigration detention facilities or holding facilities, but in locations sporadically used to detain for short periods of time during other DHS operations, such as U.S. Coast Guard vessels, conference rooms, and hotel rooms. Groups urged DHS to include additional regulatory protections for this temporary type of confinement. Although such temporary-use facilities are covered by existing policy, the former Commissioners recommended that DHS memorialize such guidance in binding Federal standards.

DHS reiterates that its zero-tolerance policy applies to all of its detention settings, and additional existing policies also cover temporary-use holding rooms. Moreover, any allegation of sexual abuse and assault will be reported to the JIC promptly and will promptly receive appropriate follow-up, regardless of the particular setting within DHS control in which the allegation arises. As DHS noted in the proposed rule, this rulemaking defines facility and holding facility broadly, including a number of settings that, while built for the purpose of detaining individuals, are used infrequently. DHS declines to further extend the requirements of the rule to settings that are not built for the purposes of detaining individuals, as many of the provisions, including those pertaining to supervision and monitoring and upgrades to facilities and technologies, would be impracticable, inefficient, and at times impossible to apply outside of the contexts contemplated in the rule as drafted.

Former NPREC Commissioners commented that based on the proposed rule's definition of facility, it is unclear whether external audit standards apply to contract facilities. To clarify, DHS notes that the external audit standards do apply to all facilities, including contract facilities, in which the standards have been adopted.

*Exigent circumstances.* Multiple commenters objected to the definition of ''exigent circumstances'' as too broad. The rule allows detainee pat-down and strip search searches to be conducted by staff of the opposite sex in exigent circumstances. The former NPREC Commissioners commented that the definition might weaken the effect of the proposed standards by too readily allowing cross-gender searches. The Commissioners recommended that DHS replace ''exigent circumstances'' with a more restrictive exception, such as ''in case of emergency circumstances.'' Another group stated that many standards would not apply because exigent circumstances exceptions could be continuously invoked and swallow the rule, suggesting instead that the definition specify that a threat must be of serious nature. One organization suggested replacing the word ''unforeseen'' in the definition with ''unforeseeable.''

After considering these comments, DHS has determined to retain the definition in the final rule. The definition in § 115.5 is properly tailored to ensure that standards are followed except in ''temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility or a threat to the safety or security of any person.'' It is necessary for operational purposes to carve out a limited exception to certain standards. For example, threats to the safety of a detainee or officer must be considered. In addition, a facility might have to adjust to the unforeseen absence of a staff member whose presence is typically necessary to carry out a specific standard.

*Contractor.* Multiple commenters suggested that DHS clarify the definition of contractor to include all employees and subcontractors of the person or entity referred to in the relevant provision. In response to these comments, DHS notes that it considers all facility employees and sub-contractors to be covered under the final rule's definition of staff in § 115.5, which ''means employees or contractors of the agency or facility, including any entity that operates within the facility.''

*Family unit.* Multiple commenters recommended changing the requirement in the proposed rule that provided that to qualify as a family unit under Subpart A, none of the juvenile(s) or his/her/their parent(s) or legal guardian(s) may have a known history of criminal or delinquent activity. The commenters expressed concern that this could lead to the separation of a detained family where a member had a non-violent adjudication or committed a non-violent offense years ago, where a member committed an immigration-related crime, or where a juvenile was engaged in a delinquent activity. Some groups suggested that the qualifier ''violent'' be used to describe disqualifying criminal or delinquent activity and that only ''violent criminal or delinquent activity, or . . . sexual abuse, violence or substance abuse that could reasonably put the safety or well-being of other family members at risk'' should prevent an otherwise qualifying group from falling into the family unit definition. One group recommended that protection of the family unit be paramount, with exceptions being narrower than in the proposed rule. The former Commissioners also seemed to assert that the definition could exclude situations where juveniles are accompanied by non-parental family members or family friends, and further expressed concern that the definition was too narrow and could jeopardize keeping family units intact. Advocacy groups stated the definition should better reflect ''the child's lived reality'' and more closely comply with existing Federal standards.

While DHS must take steps to ensure the safety of minors in its custody, the agency also recognizes the important goal of keeping families intact. DHS has revised the ''family unit'' definition in the final rule to provide a more straightforward regulatory description in a manner that accords with current ICE policy and that recognizes the need for flexibility due to the operational realities of ensuring a safe detention environment. DHS's revised definition states that family unit means a group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence. This modified definition ensures the necessary language to qualify as a ''family unit'' under the

Family Detention and Intake Guidance remains in the regulatory text. The revised definition also permits the agency to maintain needed flexibility to ensure the safety of juveniles in DHS custody.

Revising the ''family unit'' definition as applied in Subpart A to allow all individuals with a non-violent criminal history to stay with minors, and to expand the definition of family to include non-parental family members or family friends, as recommended by commenters, potentially could conflict with the intent behind ICE's Family Detention and Intake Guidance, which seeks to protect children from abuse and human trafficking. DHS therefore declines to incorporate that specific recommendation into the revised definition.

One commenter suggested revising the definition of family unit to include not only non-U.S. citizen juvenile(s) accompanied by their parents or legal guardians, but also non-U.S. citizen juveniles accompanied by ''a sponsor approved by'' HHS/ORR. The commenter stated that ''[i]n the context of apprehension and enforcement, a family unit should be broadened to include ORR-approved sponsors because they have the authority to release unaccompanied children to a 'suitable family member' per 8 U.S.C. 1232(c).''

The definition of ''family unit'' relates to placement in the ICE Family Residential Program. An unaccompanied alien child without a parent or legal guardian would not meet the criteria set forth in the definition of a ''family unit'' for these purposes. An unaccompanied alien child would not be accompanied by a sponsor approved by HHS/ORR until after they are transferred from DHS to HHS/ORR. Once an unaccompanied alien child is transferred to HHS/ORR, they are no longer within DHS's jurisdiction. Furthermore, because the purpose of this final rule is to prevent, detect, and respond to sexual abuse and assault in confinement facilities, addressing the treatment of a family unit during apprehension and enforcement is outside the scope of this rule.

*Gay, lesbian, bisexual.* One immigration advocacy group requested that the final rule define these terms, in addition to already included definitions of transgender, intersex, and gender nonconforming. The group suggested first looking to the U.S. Citizenship and Immigration Services (USCIS) Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) Asylum Module's definitions regarding sexual orientation, gay, lesbian, heterosexual/straight, and bisexual.

After considering the comment to include these terms in the final rule, DHS decided not to add them to the definitions section for several reasons. First, DHS used the DOJ PREA final rule—which does not define gay, lesbian, and bisexual—as a general guide when determining which definitions should be included. Second, as a general matter, the regulation currently relies on self-identification for classification and protective purposes.

*Security staff, law enforcement staff.* A collection of advocacy groups suggested that the proposed definitions' distinction between security staff who operate at immigration detention facilities, and law enforcement staff who operate in a holding facility, should be eliminated and consolidated under one ''security staff'' definition so that security personnel at each type of facility are labeled in the same way. The groups contended that DHS does not need to differentiate like the DOJ standards, and suggests consolidating by adding ''or holding facility'' to the conclusion of the ''security staff'' definition.

DHS notes that under the final rule, there is a meaningful difference between security staff and law enforcement staff. Unlike holding facilities, which are staffed by law enforcement officers from either ICE or CBP, immigration detention facilities use a wide range of staffing, including personnel from private companies who are not law enforcement officers. The general definitions of ''law enforcement staff'' and ''security staff'' recognize this distinction and allow DHS to tailor its rule to the specific contexts at issue.

**Definitions Related to Sexual Abuse and Assault (§ 115.6)**

*Sexual abuse.* One commenter stated that the current definition should include language from the definition implemented by DOJ, including unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures or actions of a derogatory or offensive sexual nature. The commenter encouraged DHS to add this language because the actions that are described in DOJ's definition seem more likely to occur than the proposed rule's description of sexual abuse. A number of advocacy groups commented that the part of the proposed sexual abuse definition addressing threats, intimidation, harassment, profane or abusive language, or other actions or communications coercing or pressuring into a sexual act, should include ''requests'' and should also encompass ''encouraging'' detainees to engage in such an act.

It appears that the commenters are comparing the DHS definition of sexual abuse to the definition of sexual harassment in DOJ's standards. DHS has not added this language because the DHS standards already include a similar definition of sexual harassment within the current DHS definition of sexual abuse. Specifically, the DHS definition of sexual abuse in § 115.6 forbids ''threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.'' DHS believes that this coverage under the definition of sexual abuse is sufficient and accomplishes the objective sought by the commenter. DHS also notes that the standards include sexual harassment in the definition of staff on detainee sexual abuse.

Regarding the proposed rule's provision on inappropriate visual surveillance, certain advocacy groups requested that the standards specifically include within the definition of sexual abuse acts of voyeurism by staff members, contractors, or volunteers. The commenters suggested that explicitly incorporating voyeurism into the definition was necessary in order to capture the complete scope of prohibited behavior. The suggested more expansive definition would include unnecessary or inappropriate visual surveillance of a detainee, including requiring a detainee to expose his or her buttocks, genitals, or breasts, or unnecessarily viewing or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

DHS has considered this suggested addition to the standards and the DHS final rule now expressly includes voyeurism by a staff member, contractor, or volunteer as a type of sexual abuse. Voyeurism is defined as ''inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: Staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.''

One commenter suggested that the sexual abuse definition account for a detained child's legal inability to consent to sex with an adult. DHS recognizes the extreme importance of protecting minors while in custody and remains fully committed to that end.

DHS notes that existing Federal and State laws legally preclude the possibility of consent by a detainee to sexual relations with a staff member while in custody, and moreover provide that any such sexual acts be criminalized, regardless of the age of the detainee. DHS considers the existence of these legal prohibitions outside the context of the regulation to authoritatively establish the legal inability of a child to consent to sex with an adult while in detention. For this reason, DHS declines to incorporate additional language to the regulation in response to the comment.

**Coverage of DHS Immigration Detention Facilities (§ 115.10); Coverage of DHS Holding Facilities (§ 115.110)**

*Summary of Proposed Rule*

The standards contained in the proposed rule clarified that ICE immigration detention facilities are governed by Subpart A of the rule. DHS holding facilities are governed by Subpart B. DHS recognizes that to effectively prevent, detect, and respond to sexual abuse in its facilities, DHS must have strong standards appropriate to each unique context. Immigration detention facilities and holding facilities are different by nature and need to have a respectively different set of standards tailored to each of them for an effective outcome.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Regarding coverage, one organization expressed concern that agency policies should include zero tolerance of sexual abuse during transportation of detainees in DHS custody, as well as in detention facilities. The group suggested stating in Subpart B's coverage standard that the standard covers transportation to or from DHS holding facilities in addition to holding facilities themselves.

*Response.* Please see DHS's response in the discussion of § 115.5 above.

**Zero Tolerance; PSA Coordinator (§§ 115.11, 15.111)**

*Summary of Proposed Rule*

The standards in the proposed rule required that each covered agency have a written zero-tolerance policy toward sexual abuse, outlining the agency's approach to preventing, detecting, and responding to such conduct. DHS also proposed that each covered agency appoint an upper-level, agency-wide PSA Coordinator to oversee agency efforts to comply with the DHS standards and that each immigration detention facility covered by Subpart A have its own written zero-tolerance policy and appoint a Prevention of Sexual Assault (PSA) Compliance Manager to oversee facility efforts in this regard.

*Changes in Final Rule*

DHS is adopting the regulation as proposed, with one technical revision to the PSA Coordinator's title.

*Comments and Responses*

*Comment.* The organization that suggested changes regarding covering transportation in § 115.110 also recommended revising paragraph (b) to include in the PSA Coordinator's responsibilities for protecting detainees in the agency's custody, including detainees being transported to or from its holding facilities while in DHS custody, in addition to those held in all of its holding facilities.

*Response.* As previously stated, DHS has zero tolerance for all forms of sexual abuse and assault of individuals in custody. This applies to DHS custodial transport to and from holding facilities and immigration detention facilities, between a holding facility and a detention facility, and for the purposes of removal. The PSA Coordinators will oversee all component efforts to comply with the standards, including zero tolerance. It is not necessary to revise the rule to include a reference to transportation.

*Comment.* Former NPREC Commissioners noted that under the proposed standards, facilities have considerable discretion to determine their sexual abuse policies; therefore, prior to permitting detainees to be confined in a facility, DHS should ensure its policies are consistent with PREA standards.

*Response.* DHS concurs that it is important to ensure that facility policies are consistent with PREA standards. Section 115.11(c) already requires DHS to review each facility's sexual abuse and assault policy, as required by subsection (c). Therefore, no additional changes are required.

*Comment.* An advocacy group commented generally that DHS should allocate sufficient staff and provide them with the authority and time to continually monitor the policies enacted by the facilities to reflect the zero-tolerance goal.

*Response.* DHS recognizes the importance of dedicating personnel to implement, monitor, and oversee these efforts and has employed a full-time PSA Coordinator. Section 115.11(b) already provides that the PSA Coordinator shall have sufficient time and authority to monitor implementation.

**Contracting With Non-DHS Entities for Confinement of Detainees (§§ 115.12, 115.112)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that covered agencies that contract for the confinement of detainees include in new contracts or contract renewals the other party's obligation to comply with the DHS sexual abuse standards.

*Changes in Final Rule*

DHS revised §§ 115.12 and 115.112 to require the agency to include the entity's obligation to adopt and comply with these standards in all substantive contract modifications.

*Comments and Responses*

*Comment.* Multiple commenters suggested that contract facilities or IGSA facilities housing detainees should be required to adopt DHS sexual abuse standards within a specified timeframe, with some urging no delay in application and others urging compliance within 90 days or a year after the standards' effective date. The commenters believe that without a specific timeframe, or compliance schedule similar to that applicable to DHS's own facilities, contract facilities could delay implementing these standards. Commenters expressed concern over the potential lag between the standards' effective date and their implementation at non-DHS facilities.

Among the commenters that recommended requiring adoption of the standards during any contract modification, some commenters suggested a set timeline of 90 days after the standards' effective date for DHS to proactively initiate contract modification or modification-related negotiations with any existing non-DHS facility. One such commenter suggested eliminating ''contact renewals'' as a scenario for when compliance with the standards would be triggered. The commenters also proposed that any such negotiations conclude within 270 days of the standards' effective date. Additionally the commenters, in paragraph (b), would also include ''contract modifications'' in the monitoring process, to allow DHS to monitor compliance for modified contracts. Commenters also recommended that DHS create a new requirement that any failure to adopt the changes via contract in the specified

timeframe would disqualify the facility from continuing to detain individuals until remedied. One group suggested that compliance with the proposed 90-day timeline be verified by an independent auditing process.

*Response.* Based on ICE's past experience with the contract negotiation process, it can take one year or more to complete a contract renegotiation for a single detention facility. ICE cannot reasonably conduct such large numbers of contract negotiations simultaneously in such a short period of time. Given that there are 132 covered immigration detention facilities that would need to adopt the standards, without some additional appropriation to address these staffing and logistical challenges, bringing contract negotiations to conclusion within one year is not operationally feasible.

DHS remains committed to protecting its immigration detainees from incidents of sexual abuse and assault. With that goal in mind, DHS, through ICE, will endeavor to ensure that SPCs, CDFs, and dedicated IGSAs adopt the standards set forth in this regulation within 18 months of the effective date. These facilities currently hold more than half of the immigration detainees in ICE custody and therefore should be DHS's highest priority.

DHS, through ICE, will also make serious efforts to initiate the renegotiation process with the remaining covered facilities as quickly as operational and budgetary constraints will allow. As a matter of policy, DHS will seek to prioritize implementation to reduce the most risk as early as possible, taking into consideration all relevant factors, including the resources necessary to reopen and negotiate contracts, the size and composition of each facility's detainee population, the marginal cost of implementing the standards of each facility, the detention standards currently in effect at each facility, the prevalence of substantiated incidents of sexual abuse at each facility, and other available information related to the adequacy of each facility's existing safeguards against sexual abuse and assault.

In further recognition of DHS's pledge to abide by the principles set forth in this regulation, DHS has revised §§ 115.12 and 115.112 to require components to include these standards in contracts for facilities that undergo any substantive contract modification after the effective date. Under this provision, DHS would include the PREA standards in any contract modification that affects the substantive responsibilities of either party. (Covered substantive contract modifications would include, for example, changes to the bed/day rate or the implementation of stricter standards, but not the designation of a new Contracting Officer.) This change endeavors to ensure that facilities come into compliance with the regulation at a faster rate, but not in a manner that is operationally impossible for DHS.

*Comment.* Former Commissioners of NPREC raised an issue regarding applicability of DOJ and DHS standards. The former Commissioners recommended that DHS clarify which of the two sets of standards applies to immigration detainees held in state prisons or jails, lock-ups, or community residential settings. According to the comment, DOJ's standards are ''facility driven'' as opposed to driven by sub-population of inmates. ''If a facility meets one of the definitions for covered facility types under DOJ's Standards, then the Standards apply to the entire facility.'' The former Commissioners therefore urged that DHS clarify the application of DHS standards in facilities also covered by the DOJ standards.

The former Commissioners also recommended that DHS ensure that its detainees benefit from the most protective standards possible, regardless of whether their detainees happened to be placed in a DOJ-covered facility. To that end, the former Commissioners recommended that DHS avoid comingling DHS detainees with other populations. This would ease application of immigration standards to immigration detainees and provide them the special protections they need, so—for facilities housing inmates and detainees—housing detainees separately throughout their time in custody is necessary.

*Response.* As noted above, DHS, through ICE, will endeavor to ensure that SPCs, CDFs, and dedicated IGSAs adopt the standards set forth in this regulation within 18 months of the effective date. These facilities currently hold more than half of the immigration detainees in ICE custody and therefore are appropriately DHS's highest priority. When DHS and a facility agree to incorporate these standards into a contract, such standards are binding on the facility with respect to DHS detainees, notwithstanding any separate obligations the facility might have under the DOJ rule. DHS's standards, though not identical with DOJ's standards, are not inconsistent with them either.

While some immigration detention facilities only house immigration detainees, for operational and financial reasons, ICE cannot rely solely on such facilities to meet the agency's detention needs. As a result, some detainees are held in non-dedicated IGSAs and a significant number (approximately 20 percent of the average daily population of ICE detainees) are also held in BOP facilities or state, local, and private facilities operated under agreement between the servicing facility and a component of DOJ. Such agreements are often negotiated and executed by USMS. DHS components can benefit from such agreements as authorized users and via other indirect arrangements, which often do not afford DHS an opportunity to negotiate specific terms and conditions at length. For these facilities, DHS relies on DOJ's national standards to provide a baseline of PREA protections.

In part because DHS does not currently maintain privity of contract with these facilities, however, DHS does not consider them to fall within the ambit of §§ 115.12 and 115.112. The standards set forth in Subpart A do not apply to facilities used by ICE pursuant to an agreement with a DOJ entity (e.g., BOP facilities) or between a DOJ entity (e.g., USMS) and a state or local government or private entity. These facilities are not immigration detention facilities as the term is defined in the regulation because they are not ''operated by or pursuant to contract with U.S. Immigration and Customs Enforcement.'' Instead, the servicing facility, including its immigration detainees, is covered by the DOJ PREA standards.

Similarly, holding facilities that are authorized for use by ICE and CBP pursuant to an agreement between a DOJ entity and a state or local government or a private entity are not included in the definition of holding facility in § 115.5 or the scope provision in § 115.112 because DHS is not a party to the agreement with the servicing facility and these facilities are not under the control of the agency.

DHS recognizes that facilities might find it easier to comply with a single set of standards, rather than multiple standards simultaneously. DHS has attempted to strike a balance that covers as many detainees as possible, without imposing unnecessary burdens on facilities. DHS's approach in this area is consistent with the Presidential Memorandum, which specifically directed Federal agencies with confinement facilities that are not already subject to the DOJ final rule to establish standards necessary to satisfy the requirements of PREA. The Memorandum stated clearly that each agency is responsible for, and must be accountable for, the operations of its own confinement facilities. VAWA 2013

confirmed this view, by requiring that DHS finalize standards for ''detention facilities operated by the Department of Homeland Security and . . . detention facilities operated under contract with the Department.'' The latter category ''includes, but is not limited to contract detention facilities and detention facilities operated through an intergovernmental service agreement with the Department of Homeland Security.'' 42 U.S.C. 15607.

In short, DHS believes that facilities will know which standards to apply based on their relationship with DHS and the agreements they have executed. DHS and DOJ are committed to ensuring smooth implementation of their respective standards. If implementation reveals that facilities would benefit from further guidance regarding the applicability of each agency's standards, DHS and DOJ will work to provide such guidance. DHS makes no changes to the regulatory text as a result of this comment.

*Comment.* One commenter suggested that DHS further clarify more directly how the standards apply to private parties contracting with the government, noting concern about a possibility that contractual remedies will serve as insufficient deterrents against such private contractors who may potentially violate the standards.

*Response.* DHS recognizes the concern of commenters that private entities running detention facilities adequately comply with these standards. DHS currently enforces detention standards through contracts with facilities and believes that PREA will be effectively implemented through new contracts, contract renewals, and substantive contract modifications. DHS, through ICE, can transfer detainees from facilities that do not uphold PREA standards after adoption and it can terminate a facility's contract, which ICE has done in the past and will continue to do if a facility is unable to provide adequate care for detainees.

*Comment.* A range of advocacy groups suggested adding a paragraph to § 115.12 that would mirror the provision in Subpart B's similar proposed standard at § 115.112. The change would require all standards in Subpart A that apply to the government also apply to the contractor and all rules that apply to staff or employees also apply to contractor staff; the groups expressed concern that without this language, poorly performing contractors could attempt to excuse themselves when failing to fully comply with the standards.

*Response.* DHS declines to add paragraph (c) from § 115.112 to § 115.12 based on the inherent differences between the facilities covered by Subpart A and Subpart B, respectively. To the extent appropriate, Subpart A applies to DHS employees and contractors alike; as § 115.5 states, the term ''staff'' includes ''employees or contractors of the agency or facility, including any entity that operates within the facility.''

DHS included § 115.112(c) in Subpart B because DHS rarely uses contractors to run holding facilities and would only need to use contractors on a short-term basis. In rare instances where DHS contracts for holding facility space, paragraph (c) provides an additional layer of protection; despite the short-term nature of the detention, contractors must be fully aware of the obligation to abide by the standards set forth in this rule.

*Comment.* Former NPREC Commissioners suggested that the standard include a requirement that all contracts entered into between DHS and contracting facilities directly, through IGSAs, or through other arrangements include contract language requiring that the facilities abide by the applicable PREA standards. Some commenters suggested provisions regarding consequences for failure of contract facilities to comply with PREA, including taking away funding from noncompliant facilities, removing detainees, and closer monitoring or even criminal or civil sanctions for facilities that fail to comply repeatedly. Relatedly, some members of Congress have suggested strict and tangible sanctions for noncompliance, include termination of contracts, to ensure that individuals will not be housed in facilities that cannot protect them.

*Response.* As noted above, the final rule requires that the DHS include in new contracts, contract renewals, and substantive contract modifications the entity's obligation to adopt and comply with the standards set forth in this regulation. DHS disagrees about the need to articulate punitive measures for noncompliant facilities in the regulation. DHS, through ICE, has longstanding and well-established procedures for sanctioning under-performing facilities that violate its detention standards, including by putting any detainee in danger. For example, if ICE determines that a facility is not compliant with relevant detention standards, it can reduce the number of detainees held by the facility or impose a corrective action plan on the facility. If ICE determines that detainees remain at risk, ICE will terminate the facility's contract and remove all detainees from the facility.

*Comment.* One advocacy group suggested requiring robust oversight of the standards' implementation in contract facilities, including descriptions of the manner in which contract monitoring will be conducted, the frequency of monitoring, and the party or parties responsible for monitoring.

*Response.* Once the standards set forth in this regulation are adopted by a facility, the facility will be expected to comply with them and will be subjected to DHS and ICE's multi-layered inspection and oversight process which will include an evaluation of compliance with these standards.

Currently at ICE, ERO contracts for independent inspectors to review conditions of confinement at ICE facilities on an annual or biennial basis, with follow-up inspections scheduled as required. All ICE facilities with an average daily population of 50 or more detainees are inspected on an annual basis. In addition, ERO employs 40 on-site Federal Detention Service Managers (DSMs) at key ICE detention facilities to monitor and inspect components of facility operations for compliance with ICE detention standards. Currently, DSMs are assigned to 52 detention facilities, covering approximately 83 percent of ICE's detained population. ERO also contracts for a Quality Assurance Team (QAT) comprised of three subject matter experts in the fields of corrections and detention. The QAT performs quality assurance reviews at the facilities that have assigned DSMs. The purpose of the QAT reviews is to ensure that DSMs are effectively monitoring the operations of the facility and addressing concerns.

The ICE Office of Detention Oversight (ODO), within the Office of Professional Responsibility (OPR), conducts compliance inspections at selected detention facilities where detainees are housed for periods in excess of 72 hours. ODO selects facilities to inspect based on a variety of considerations, including significant compliance issues or deficiencies identified during ERO inspections, concerns identified or raised by the DSMs, detainee complaints, and allegations reported or referred by the DHS Office of Inspector General (OIG) or the ICE JIC. ODO provides its compliance inspection reports, recommendations and identified best practices to ERO and ICE leadership who ensure appropriate corrective action plans are developed and put in place at detention facilities.

At the Department level, CRCL reviews allegations related to civil rights and civil liberties issues in immigration detention facilities. The OIG also may

respond to certain complaints by conducting investigations. The OIG will refer certain complaints to ERO.

**Detainee Supervision and Monitoring (§§ 115.13, 115.113)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required the agency or the facility to make its own comprehensive assessment of adequate supervision levels, taking into account its use, if any, of video monitoring or other technology. The agency or facility must reassess such adequate supervision and monitoring at least annually and the assessment will include an examination of the adequacy of resources it has available to ensure adequate levels of detainee supervision and monitoring. Each immigration detention facility must also conduct frequent unannounced security inspections to identify and deter sexual abuse of detainees.

*Changes in Final Rule*

DHS added two factors for the facility to consider when determining adequate levels of detainee supervision and determining the need for video monitoring. These factors are (1) generally accepted detention and correctional practices and (2) any judicial findings of inadequacy.

DHS also made a minor change to § 115.13(d). Instead of prohibiting staff from alerting others that ''supervisory rounds'' are occurring, DHS prohibits staff from alerting others about the ''security inspections.'' The purpose of this change is to make the provision more consistent with the rest of the paragraph, which refers to such checks as security inspections rather than supervisory rounds.

*Comments and Responses*

*Comment.* A number of commenters requested generally that this section more closely resemble DOJ's standards regarding supervision and monitoring. A human rights advocacy group requested that DOJ's more specific list of factors in paragraph (a) be included. Under this approach, the rule would explicitly require facilities to consider, when determining adequate staffing levels, past findings of supervision inadequacies by courts or internal or external oversight bodies. These considerations would be in addition to the considerations set forth in the proposed section's paragraph (c), which provides that ''the facility shall take into consideration the physical layout of each facility, the composition of the detainee population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse, the findings and recommendations of sexual abuse incident review reports, and any other relevant factors, including but not limited to the length of time detainees spend in agency custody.''

*Response.* DHS respectfully disagrees with the notion that its supervision and monitoring provision must include the same enumerated factors included in DOJ's regulation regarding facilities. DOJ's rule is intended to cover a broad range of Federal and State facilities managed and overseen by a variety of different government organizations. By contrast, ICE oversees detainee supervision and monitoring at all immigration detention facilities. ICE uses its well-established detention standards to ensure that facilities are properly and effectively supervising detainees. DHS agrees, however, that a number of factors from DOJ's regulation have application in the DHS context. DHS has therefore incorporated into its regulation the following two additional factors: (1) Generally accepted detention and correctional practices and (2) any judicial findings of inadequacy.

*Comment.* A number of comments addressed the requirements for security inspections. Regarding the standard in § 115.113 for holding facilities specifically, one organization suggested that DHS add a requirement that such facilities conduct periodic unannounced security inspections just as in Subpart A, stating that video monitoring is not a substitute for adequate staffing and also suggesting that the clauses in both proposed sections allowing video monitoring where applicable be struck from paragraph (a) and instead included in paragraph (b) as a part of the requirement to develop and document supervision guidelines.

*Response.* DHS defines a holding facility similarly to DOJ's definition of ''lockup.'' The DOJ rule requires unannounced security inspections of adult prisons and jails, but not of lockups. Similarly, DHS provides for such inspections in its immigration detention facilities, but not in its holding facilities. This is because holding facilities, like lockups, generally provide detention for much shorter periods of time.

*Comment.* Commenters suggested adding another requirement for intermediate-level or higher-level supervisors to conduct more inspections.

*Response.* DHS notes that by focusing on having only mid- to high-level supervisors conduct inspections, the facilities would not be effectively accomplishing the main purpose of the provision, which is to deter sexual assault and abuse. DHS believes that facility staff are trained and qualified to conduct security inspections and that these inspections are an effective and efficient deterrent to sexual abuse and assault. Because deterrence is the primary purpose of this requirement, and because, in its experience, non-supervisory inspections are an effective deterrent, DHS declines to make the suggested revisions.

*Comment.* Another comment criticized § 115.13 generally for not articulating the frequency (e.g., regular inspections) or location of the inspections (e.g., throughout the facility). The commenter believed this would result in minimal deterrent effect and low likelihood of identifying misconduct as it occurs.

*Response.* DHS notes that paragraph (d) provides for unannounced security inspections, which may occur with varying frequency and in any part of a facility. These unannounced inspections are meant to act as a deterrent, and are not meant to catch detainees and/or staff in acts of sexual assault or abuse. Unannounced security inspections are an effective tool used by facilities to deter a wide range of detainee and employee misconduct.

*Comment.* Multiple commenters suggested additional requirements for the proposed standards on developing and documenting comprehensive detainee supervision guidelines. One comment recommended that DHS require facility-specific development and implementation of a concrete staffing and monitoring plan, with a specific provision for adequate numbers of supervisors. Another comment recommended that DHS adopt an analogue to paragraph (b) of the DOJ standard, which requires that ''the facility shall document and justify all deviations from the [staffing] plan.'' Comments also suggested that the agency also document any needed adjustments identified in the annual review, and that—when not in compliance with the staffing plan—a facility should be required to document and justify all deviations, for measuring and compliance during auditing and oversight.

*Response.* These standards require that each immigration detention facility develop and document comprehensive detainee supervision guidelines, to ensure that the facility maintains sufficient supervision of detainees to protect detainees against sexual abuse. As explained above, the sufficiency of supervision depends on a variety of factors, including, but not limited to, the physical layout of each facility, the

composition of the detainee population, and each facility's track record in detainee protection.

Currently, NDS relies on performance-based inspections to determine whether a facility has adequate supervision and monitoring. ICE's 2008 PBNDS and 2011 PBNDS require that facility administrators determine the security needs based on a comprehensive staffing analysis and staffing plan that is reviewed and updated at least annually. Section 115.13 enhances ICE's detention standards by requiring that facilities develop and document comprehensive detainee supervision guidelines which will be reviewed annually. Unlike the facilities that fall under DOJ's final rule, ICE has direct oversight over immigration detention facilities and can, through its well-established inspection process, effectively determine whether a facility's detainee supervision guidelines are inadequate and whether a facility is not providing adequate supervision and monitoring.

Furthermore, requiring every facility to adopt specific staffing ratios under this regulation could significantly increase contract costs without commensurate benefits. In short, DHS has determined that it can make more effective use of limited resources by mandating comprehensive guidelines that each facility will review annually and auditors will examine on a regular basis.

DHS declines to require facilities to document deviations from supervision guidelines because we do not believe this additional documentation would materially assist ICE monitoring of conditions generally and compliance with the supervision guidelines in particular. Through its comprehensive facility oversight and inspection programs, ICE has sufficient tools to ensure that facilities effectively supervise detainees and comply with these regulations. And if ICE determines after an inspection that a facility has failed to meet the standards set forth in § 115.13 or failed adequately justify deviations from supervision guidelines, ICE has direct authority to remove detainees from the facility. DHS has therefore elected to proceed with the proposed rule's approach.

*Comment.* One group suggested that, in regard to the standard on determining adequate levels of detainee supervision and video monitoring in paragraph (c), an annual review should assess effectiveness and identify changes that may be necessary to improve effectiveness and allow implementation.

*Response.* As discussed above, staffing levels, detainee supervision, and video monitoring are inspected on a regular basis. Once a facility adopts these standards, it also will be subject to regular auditing by an outside entity pursuant to the audit requirement in this regulation. Under section 115.203, such audits must include an evaluation of (1) whether facility policies and procedures comply with relevant detainee supervision and monitoring standards and (2) whether the facility's implementation of such policies and procedures does not meet, meets, or exceeds the relevant standards. 6 CFR 115.203(b)–(c).

**Juvenile and Family Detainees (§§ 115.14, 115.114)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required juveniles to be detained in the least restrictive setting appropriate to the juvenile. The Subpart A standard required immigration detention facilities to hold juveniles apart from adult detainees, minimizing sight, sound, and physical contact, unless the juvenile is in the presence of an adult member of the family unit, and provided there are no safety or security concerns with the arrangement. That standard further required that facilities provide priority attention to unaccompanied alien children, as defined by 6 U.S.C. 279, who would be transferred to an HHS/ORR facility.

*Changes in Final Rule*

DHS made minor changes to § 115.14(a), (d), and (e) of the final rule. The ''in general'' and ''should'' language that was suggested in the NPRM was removed in paragraph (a) to ensure a clear requirement that juveniles shall be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as with any other laws, regulations, or legal requirements.

DHS made a technical change to paragraph (d) to maintain consistency between this regulation and the statutory provision at 8 U.S.C. 1232(b)(3). DHS clarified that paragraph (e) does not apply if the juvenile described in the paragraph is not also an unaccompanied alien child.

Regarding the Subpart B standard at § 115.114, DHS added the same change in paragraph (a) as in § 115.14(a) for consistency. DHS also added more specific language in paragraph (b) to require that unaccompanied juveniles generally be held separately from adult detainees. The final standard also clarifies that a juvenile may temporarily remain with a non-parental adult family member if the family relationship has been vetted to the extent feasible, and the agency determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.

*Comments and Responses*

*Comment.* Commenters expressed concern that the standards should not allow for housing of juveniles in adult facilities, particularly if not held with adult family members. One human rights advocacy group stated that as proposed, the standard on separating juveniles does not set forth specific steps to prevent unsupervised contact with adults.

*Response.* It is DHS policy to keep children separate from unrelated adults whenever possible. To take into account, in part, the resulting settlement agreement between the legacy INS and plaintiffs from class action litigation, known as the *Flores* v. *Reno* Settlement Agreement (FSA), INS—and subsequently DHS—have put in place policies covering detention, release, and treatment of minors in the immigration system nationwide. Both the FSA and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) inform DHS policies regarding juveniles. There are sometimes instances in which ICE personnel reasonably believe the juvenile to be an adult because the juvenile has falsely represented himself or herself as an adult and there is no available contrary information or reason to question the representation. Under existing policy, ICE officers must base age determinations upon all available evidence regarding an alien's age, including the statement of the alien.

In promulgating these PREA standards, DHS attempted to codify the fundamental features of its policy in regulation, while maintaining a certain amount of flexibility for situations such as brief confinement in temporary holding facilities. Additionally, DHS, through ICE, must and does enforce the Juvenile Justice and Delinquency Prevention Act, which requires that alien juveniles not charged with any offense not be placed in secure detention facilities or secure correctional facilities and not be detained or confined in any institution in which they have contact with adult inmates. *See* 42 U.S.C. 5633.

*Comment.* Former Commissioners of NPREC and other groups recommended that both the Subpart A and B standards require all sight and sound separation from non-familial adults, as DOJ's standard does. Some members of Congress commented generally that the

standards on housing of juveniles should be revisited to be in line with DOJ's standard. For the Subpart A standard, comments suggested more explicit language requiring facilities to separate juveniles by sight, sound, and physical contact to clarify the degree of separation required; they recommended that DHS eliminate the language of ''minimizing'' such situations.

Regarding the Subpart B standard, a commenter suggested physical contact, sight, and sound restrictions be in place particularly for shared dayrooms, common spaces, shower areas, and sleeping quarters. Similarly, one group comment suggested adding language to define the meaning of ''separately'' in Subpart B's unaccompanied alien children provision to ensure placement outside of the sight and sound of, and to prevent physical contact with, adult detainees to the greatest degree possible.

*Response.* Regarding Subpart A, DHS does not believe the suggested changes are appropriate, as the DHS standard is tailored to the unique characteristics of immigration detention and the variances among confinement facilities for DHS detainees. With respect to the Subpart A standard for immigration detention facilities, juveniles are primarily held in such facilities under the family residential program. (Rarely, DHS must detain a minor who is not unaccompanied but who is, for example, a lawful permanent resident who has committed a serious crime. In this rare circumstance, DHS uses an appropriate juvenile detention facility which is subject to regular inspection by ICE.) Under the family residential program, juveniles are held with adult family members—not solely with other juveniles as would be the case in the context of DOJ's traditional juvenile settings. Juveniles in the family residential setting for immigration detention may have some contact with adults; however, an adult family member will be present. Given the unique nature of the family detention setting, maintaining the standard's language as proposed is the best and most straightforward way to meet PREA's goals.

The burden of inserting additional specific restrictions would be particularly high because unaccompanied alien children are generally transferred to an HHS/ORR facility within a short period of time—72 hours at most—after determining that he or she is an unaccompanied alien child, except in exceptional circumstances.[10] DHS does not believe the best approach is to wholly transfer DOJ's standard, which fits the correctional system rather than immigration juvenile detention system, to the DHS context in the manner described by the commenters.

Regarding the Subpart B standard, DHS notes that its standard is consistent with, and in some ways more detailed than, the analogous DOJ standard. Finally, DHS intends that the word ''separately'' be understood according to the plain meaning of the word. To keep the standards straightforward and easily administrable, DHS declines to create a separate definition of the term for purposes of these standards.

*Comment.* One commenter suggested adding requirements for separation outside of housing units to mirror the DOJ standard's requirement of sight and sound separation. The commenter also recommended adding requirements for direct staff supervision when not separated.

*Response.* Consistent with the reasoning above, DHS does not believe changes to conform with the DOJ standard in this manner are appropriate, as the DHS standard is tailored to the unique characteristics of immigration detention and the variances among confinement facilities for DHS detainees.

*Comment.* An immigration advocacy group commented that it had received preliminary data as a result of a request under the Freedom of Information Act, and that data show thousands of children, including many under the age of 14, have been housed in adult facilities. The commenter wrote that such a practice would violate the terms and conditions of the FSA, which sets forth a policy for the detention, release, and treatment of minors in the custody of then-INS and requires that unaccompanied minors be generally separated from unrelated adults. The commenter also wrote that PREA regulations that discourage but do not prohibit this practice are insufficient to protect this exceptionally vulnerable population from potential sexual abuse.

*Response.* DHS has examined available data on this subject, and determined that the commenter's conclusions do not reflect ICE practices. DHS assures the commenter as follows:

- Any individual who claims to be a juvenile during processing or while in detention is immediately separated from the general adult population pending the results of an investigation into the claim;
- All unaccompanied alien children are required to be transferred to an HHS/ORR facility within 72 hours after determining that the child is an unaccompanied alien child, except in exceptional circumstances;
- As stated in § 115.14(b), juveniles will be held with adult members of the family unit only when there are no safety or security concerns with the arrangement; and
- As indicated in § 115.114, if juveniles are detained in holding facilities, they shall generally be held separately from adult detainees. Where, after vetting the familial relationship to the extent feasible, the agency determines it is appropriate, under the totality of the circumstances, the juvenile may temporarily remain with a non-parental family member.

*Comment.* Some commenters suggested that more explicit language be incorporated in the standards to prevent abusive use of restrictive confinement in all types of facilities. Multiple groups expressed concern that administrative segregation for juveniles must be limited. One group stated that any separation of juveniles from adult facilities, which it supported, should not subject them to harmful segregation or solitary confinement. Others suggested strict limits, including for all forms of protective custody, with a collection of groups suggesting an explicit prohibition on administrative segregation and solitary confinement if needed to comply with the juvenile and family detainee requirements. The groups suggested removing the phrase ''[in] general'' in paragraph (a) of the Subpart A and B standards regarding making juvenile detention as least restrictive as possible. One organization suggested requirements for when isolation is necessary to protect a juvenile, including documenting the reason therefor, reviewing the need daily, and ensuring daily monitoring by a medical or mental health professional.

*Response.* Upon reconsideration based upon these comments, DHS has concluded that in the interest of clarity removing the introductory words ''[in] general'' from paragraph (a) is appropriate. However, DHS does not see a need for an explicit regulatory prohibition on administrative segregation, solitary confinement, and the like in this context; concerns about overly restrictive confinement for juveniles should be alleviated by the strong standards in both subparts—further strengthened in this final rule—requiring juveniles to be detained in the least restrictive setting appropriate to the juvenile's age and special needs, taking into account safety concerns,

[10] ICE will occasionally and for short periods of time house unaccompanied alien children whose transfer to HHS/ORR is pending in IGSA juvenile detention facilities. These facilities are subject to inspection and oversight by ICE.

laws, regulations, and legal requirements. Administrative segregation and solitary confinement clearly do not comply with the requirement that juveniles be detained in the ''least restrictive setting appropriate.''

Additionally, the TVPRA mandates that, except in exceptional circumstances, DHS turn over any unaccompanied child to HHS/ORR within 72 hours of determining that the child is an unaccompanied alien child and that ORR promptly place the child in the least restrictive setting that is in the child's best interest. *See* 8 U.S.C. 1232(b)(3), (c)(2)(A).[11] Therefore, the types of segregation described by the commenters are generally neither feasible nor permissible for such children.

These concerns appear even further diminished when taking into account that under ICE policy juveniles are to be supervised in an alternate setting which would generally not include administrative segregation. Because Subpart A of these standards implements safeguards that will allow a juvenile to be in the presence of an adult member of the family unit when no safety or security concerns exist, accompanied children remaining in immigration detention will not present situations of serious concern either. For these same reasons, DHS declines to adopt the additional suggested requirements regarding isolation.

*Comment.* Multiple commenters recommended that when possible and in the best interest of the juvenile, family units should remain intact during detention. Some commenters suggested that DHS include this principle in the regulation. Some commenters also recommended expanding the definition of family unit to account for more expansive understandings of parentage and guardianship in many countries of origin. They suggested that if there are concerns about a child's safety with a family member, other than a parent or legal guardian, DHS assess the relationship and safety and make appropriate placements, including admitting such a family unit while providing separate housing for the child in the same facility.

*Response.* For immigration detention facilities, DHS has set a regulatory ''floor'' in § 115.14 and in the regulatory definition of family unit. This suite of requirements provide that facilities do not hold juveniles apart from adults if the adult is a member of the family unit, provided there are no safety or security concerns with the arrangement. DHS holds immigration detention facilities and holding facilities accountable for complying with a range of policy, and now regulatory, requirements.

With respect to the suggestion that DHS add regulatory language addressing intact family unit detention, DHS declines to adopt such a standard. ICE has found that the PREA standards' definition of family unit and current ICE policy, specifically ICE's Family Detention and Intake Guidance, has worked well, and to the extent that deficiencies might exist, DHS does not believe that addressing them in regulation would be beneficial to the affected population.

With respect to expanding the regulation's treatment of the family unit beyond the parent or legal guardian, DHS declines to expand the ''family unit'' definition, given the legal requirement for DHS to transfer unaccompanied alien children to HHS, generally within 72 hours of determining that the child is an unaccompanied alien child. *See* 8 U.S.C. 1232(b)(3). Under the Homeland Security Act of 2002, adopted by the TVPRA, an ''unaccompanied alien child'' is defined, in part, as a child for whom ''there is no parent or legal guardian'' either in the United States or available in the United States to provide care and custody. 6 U.S.C. 279(g)(2); *see also* 8 U.S.C. 1232(g). DHS's definition of ''family unit'' takes these provisions on unaccompanied alien children into account.

However, for Subpart B, as indicated above, DHS has revised § 115.114 to provide that where the agency determines that it is appropriate, under the totality of the circumstances and after vetting the familial relationship to the extent feasible, the juvenile may temporarily remain with a non-parental adult family member.

*Comment.* One organization suggested a more bright line mandate regarding the proposed standard's paragraph (d) by requiring the transfer of unaccompanied alien children to HHS/ORR within the timeframe proposed. Another advocacy group emphasized the importance of adequate training and procedures for meeting the timeframe for transfer.

*Response.* DHS has considered these comments; however, the standard as proposed, which mandates the transfer of unaccompanied alien children within the 72-hour timeframe except in exceptional circumstances, is consistent with the TVPRA requirements. DHS is confident that the transfer of unaccompanied alien children to ORR will continue to be carried forth expeditiously. DHS will strictly enforce this regulatory provision, as it will all PREA standards. With respect to the observation on the importance of adequate training and internal procedures to support timely transfer to ORR, DHS takes the comments under advisement for purposes of developing its training curriculum.

*Comment.* An advocacy group recommended ensuring adequate training regarding the enforcement of the standards in general and procedures to avoid sexual abuse or assault of minors in DHS custody. The group suggested that DHS regularly update and implement field guidance regarding age determinations and related custody decisions, consistent with HHS/ORR program instructions.

*Response.* DHS makes changes to existing guidance on issues such as age determinations and custody to reflect new laws, policies, or practices, or as otherwise needed.

*Comment.* A number of comments recommended additional protection for unaccompanied children and families in family facilities specifically. The former NPREC Commissioners recommended that DHS separate provisions dealing with unaccompanied minors from provisions dealing with families. Similarly, one advocacy group stated that, because in its view detaining juveniles in family facilities does not eliminate sexual assault risk and may create a greater risk, DHS should include additional standards specific to the family unit setting.

The former NPREC Commissioners specifically suggested DHS adopt additional standards that would apply to the family facility setting specifically. Proposed provisions included screening/vetting of immigration detainees in family facilities, reporting of sexual abuse in family facilities, investigations in family facilities, and access to medical and mental health care in family facilities. The former Commissioners believe that these additional measures would improve protections in family settings.

*Response.* DHS has considered these comments and declines to make the suggested changes to the proposed standard. DHS grouped the provisions specific to all juvenile detention and

[11] In addition, under 8 U.S.C. 1232(c)(2)(B), if an unaccompanied alien child reaches 18 years of age and is transferred to DHS custody, DHS must consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens are eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

family detention in one section in order to account for current immigration detention and holding facility practice and policy. Under current practice and policy, a single facility might detain individuals as well as families. (In other words, families detained while travelling or living together may be detained together, even if the facility usually holds detainees as individuals only.) Given this context, DHS believes that streamlining juvenile-specific regulatory standards in a single location strengthens protections, as responsible officials are able to refer to a ''one-stop shop'' in §§ 115.14 and 115.114. DHS believes that its decision to streamline the standards will not decrease the level of protection to young detainees. DHS will carefully monitor policies and the implementation of this approach and make future policy or regulatory changes if necessary.

With respect to the former NPREC Commissioners' specific proposals for family unit detention and/or family facilities, ICE already has strong policies in place regarding these matters. These standards and ICE policies include detailed provisions on screening/vetting of immigration detainees, reporting of sexual abuse, investigations, and access to medical and mental health care. Again, in addition to the PREA regulatory standards that address these topics generally for all detainees, the 2007 Residential Standard addressing Sexual Abuse and Assault Prevention and Intervention ensures that individuals in family and residential settings are protected by measures relating to these precise topics.

*Comment.* One commenter recommended that DHS promulgate a separate set of standards to prevent abuse in facilities that detain children. The group expressed that a significantly improved accounting for the needs of and special risks faced by such youth is necessary.

*Response.* DHS has considered this comment and, as a policy matter, declines to set forth differing abuse-prevention standards depending on whether a specific detainee population happens to be present at a specific point in time. Because DOJ's standards address juvenile-only facilities through either the juvenile justice system or the criminal justice system, DOJ's standards specifically included a definition of a juvenile facility. *See* 77 FR 37105, at 37115. But immigration detention facilities and temporary holding facilities are not so easily characterized. For example, family unit detention includes juveniles as well as adults. PREA protections apply to a family unit detention facility in the same manner that they apply to other immigration detention facilities. The potential benefits of creating a separate set of standards for this context are not apparent, especially in light of the fact that the applicable standards in Part A are robust.

With respect to juveniles detained outside of family units, as noted above, unaccompanied alien children are generally placed with ORR almost immediately; ORR is responsible for making decisions related to the care and custody of such children in their charge. For the 72-hour intervening period up to which DHS may generally maintain custody, concerns about abuse should be alleviated by the strong requirements in both subparts that generally prohibit juveniles from being held with adult detainees in non-familial situations. DHS believes that the final standards on juvenile and family detainees, with the revisions noted above, sufficiently protect juveniles in immigration detention and holding facilities. Due to these factors, DHS has declined to promulgate a wholly separate set of standards for facilities that house juveniles.

*Comment.* One comment suggested explicit requirements that, absent exigent circumstances, juveniles have access to daily outdoor recreation; a number of groups suggested the same standard for large muscle exercise, legally required special education services, and—to the extent possible—other programs.

*Response.* Except to the extent affected by standards designed to prevent, detect, and respond to sexual abuse and assault in detention facilities, access to activities and other services is outside the scope of this rulemaking. Therefore, it is not necessary to include a list of specific kinds of juvenile detainee activities and access in these standards.

*Comment.* One advocacy group suggested a requirement that children have meaningful access to their attorneys during interactions with DHS officials, including such interactions after transfer to HHS/ORR.

*Response.* This comment is outside the scope of this rulemaking. DHS therefore declines to address it here.

**Limits to Cross-Gender Viewing and Searches (§§ 115.15, 115.115)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required policies and procedures that enable detainees to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or bowel movement under medical supervision. The standards also required that staff of the opposite gender announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing. The proposed rule prohibited cross-gender strip searches except in exigent circumstances, or when performed by medical practitioners and prohibits facility staff from conducting body cavity searches of juveniles, requiring instead that all body cavity searches of juveniles be referred to a medical practitioner.

In Subpart A, the proposed rule generally prohibited cross-gender pat-down searches of female detainees, unless in exigent circumstances. The proposed rule permitted cross-gender male detainee pat-down searches when, after reasonable diligence, staff of the same gender was not available at the time the search or in exigent circumstances. The proposed rule required that any cross-gender pat-down search conducted pursuant to these exceptions be documented. The proposed rule required these policies and procedures to be implemented at the same time as all other requirements placed on facilities resulting from this rulemaking. The proposed rule did not prohibit cross-gender pat-down searches in § 115.115 of Subpart B because of the exigencies encountered in the holding facility environment and the staffing and timing constraints in those small and short-term facilities.

In both immigration detention facilities and holding facilities the proposed rule prohibited examinations of detainees for the sole purpose of determining the detainee's gender. The proposed rule further required that all security and law enforcement staff be trained in proper procedures for conducting all pat-down searches.

*Changes in Final Rule*

In paragraph (i) of § 115.15, DHS changed the text to prohibit a facility from searching or physically examining a detainee for the sole purpose of determining the detainee's genital characteristics. The previous language used the phrase ''gender'' instead of ''genital characteristics.'' The final rule also revises paragraph (i) to allow a detainee's gender to be determined as part of a standard medical examination that is routine for all detainees during intake or other processing procedures. The final rule also revises §§ 115.15(j)

and 115.115(f) to clarify that pat-down searches must be conducted consistent with all agency policy.

*Comments and Responses*

*Comment.* A number of commenters believed the same prohibition on cross-gender pat-down searches should apply to all detainees. Two sets of advocacy groups and another organization suggested eliminating paragraph (b), which allows cross-gender searches of males in limited circumstances. A number of these and other groups suggested changing paragraph (c) to prohibit all cross-gender pat-down searches, not just for female detainees, except in exigent circumstances; some members of Congress commented in favor of doing so in order to meet ''civil confinement standards.''

Multiple commenters, including the NPREC Commissioners, criticized the inclusion of ''exigent circumstances'' as an exception to cross-gender searches. These commenters perceived the exception to be overly broad. One commenter expressed dissatisfaction with the term ''reasonable diligence'' for similar reasons. The commenter suggested a standard that would require facilities to have sufficient male and female staff to sharply limit cross-gender pat-down searching of men. Another commenter recommended narrowing the circumstances under which cross-gender pat downs of males are permitted.

A number of advocacy groups suggested explicitly requiring that facilities cannot restrict a detainee's access to regularly available programming or other opportunities in order to comply with the restrictions on cross-gender viewing and searches.

*Response.* DHS adopted a standard that generally prohibits, with limited exceptions, cross-gender pat-down searches of female and male detainees in order to further PREA's mandate of preventing sexual abuse without compromising security in detention, or infringing impermissibly on the employment rights of officers.

DHS declines to incorporate the commenters' suggestion to extend the same coverage for both male and female pat-down searches. Female detainees are especially vulnerable to sexual abuse during a pat-down search because of their disproportionate likelihood of having previously suffered abuse. According to studies, women with sexual abuse histories are particularly traumatized by subsequent abuse.[12] For detainees who have experienced past sexual abuse, even professionally conducted cross-gender pat-down searches may be traumatic and perceived as abusive. *See Jordan* v. *Gardner,* 986 F.2d 1521, 1526 (9th Cir. 1993) (*en banc*) (striking down cross-gender pat downs of female inmates as unconstitutional ''infliction of pain'' when there was evidence that a high percentage of female inmates had a history of traumatic sexual abuse by men and were being traumatized by the cross-gender pat-down searches).

Because females are disproportionately vulnerable to sexual abuse and trauma in the cross-gender pat down context, the prohibition of such pat downs unless there are exigent circumstances is a crucial protection in furtherance of PREA. DHS goes a step further than DOJ by also prohibiting cross-gender pat downs of male detainees, but allows for two exceptions—exigent circumstances, and circumstances where staff of the same gender are not available. The slightly different standard reflects the fact that men are less likely to be abused by cross-gender pat-down searches.

A categorical prohibition on cross-gender pat-down searches of male detainees except in exigent circumstances may not be operationally possible at facilities that detain males but have higher proportions of female staff. Such facilities could not guarantee the availability of adequate numbers of male staff without engaging in potential employment discrimination as a result of attempts to inflate staffing of one gender. Likewise, DHS declines to require facilities to maintain male and female staff sufficient to avoid cross-gender pat-down searches in all cases. Such a mandate could result in the unintended consequence of employment discrimination in facilities.

In response to commenters concerned that prohibiting cross-gender pat downs will lead to a restriction of detainees' access to programming, DHS notes that any restriction based on a lack of appropriate staffing for pat downs is unacceptable and is not standard practice. DHS will ensure that immigration detention facilities are allowing detainees equal access to programming without regard to detainee gender or staffing limitations.

*Comment.* Multiple commenters and other groups expressed concerns with the phrase ''incidental to routine cell checks'' and suggested it be removed as an exception allowing cross-gender viewing, a sentiment with which former NPREC Commissioners commented they agreed. One commenter suggested the phrase could allow a facility to not take needed steps and then simply claim staff viewing is exempted as incidental.

*Response.* DHS respectfully disagrees with the commenters that viewing incidental to routine cell checks is a gateway for abuse in detention. The final rule provides adequate protection by requiring each facility to have policies and procedures that oblige staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

*Comment.* Two comments suggested removing the provisions that allow cross-gender searches when safety, security, and related interests are at stake, out of apparent concern that the provision's breadth would allow facilities to ''mask abusive use of searches.''

*Response.* Maintaining safety, security and other related interests in detention in order to protect detainees, staff, contractors, volunteers, and visitors is the highest priority for DHS. Searches are an effective and proven tool to ensure the safety of every person in the detention environment. As such, the final standard maintains paragraph (a), which explains why searches are a necessary part of detention.

*Comment.* Two comments suggested that the provision in paragraph (i) regarding preventing searches for the sole purpose of determining ''gender'' be revised to instead prevent searching solely for determining ''genital characteristics.'' In the following sentence of the provision, the groups also suggest that ''genital status'' replace ''gender'' for when employees can take other steps to determine. Another advocacy group suggested clear standards for classifying as male or female based on a range of issues including self-identification and a medical assessment, and not based solely on external genitalia or identity documents.

Regarding the same provision, another commenter suggested removing ''as part of a broader medical examination conducted in private, by a medical practitioner'' as a means for making the

[12] *See* Barbara Bloom, Barbara Owen, and Stephanie Covington, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders,* at 37, NIC (2003) (''In addition, standard policies and procedures in correctional settings can have profound effects on women with histories of trauma and abuse, and often act as triggers to retraumatize women who have post-traumatic stress disorder (PTSD).''); Danielle Dirks, *Sexual Revictimization and Retraumatization of Women in Prison,* 32 Women's Stud. Q. 102, 102 (2004) (''For women with previous histories of abuse, prison life is apt to simulate the abuse dynamics already established in these women's lives, thus perpetuating women's further revictimization and retraumatization while serving time.'').

determination, and instead replacing it with ''through a routine medical examination that all detainees must undergo as part of intake or other processing procedure.''

*Response.* After considering the comments regarding paragraph (i), DHS has revised the language to prevent searches for the sole purpose of determining ''a detainee's genital characteristics'' instead of ''a detainee's gender.'' DHS also clarifies that while medical examinations may be done to determine gender, they must be part of a standard medical exam that is routine for all detainees during intake or other processing procedures. DHS believes that the final rule allows a range of issues to be considered for gender determination. In addition to medical examinations, the determination may be made during conversation and by reviewing medical records.

*Comment.* One advocacy group suggested that searches of transgender and intersex detainees should have clear standards and by default be conducted by female personnel, as the group contends risk of sexual abuse is generally lower when the search is conducted by females.

Two comments suggested adding a provision in paragraphs (j) and (f), for Subparts A and B, respectively, to require that same-gender searches for transgender and intersex detainees be conducted based on a detainee's gender identity absent a safety-based objection by the detainee. One commenter also suggested that we replace the phrase ''existing agency policy'' with ''these regulations, and compatible agency policy'' for clarity.

*Response.* DHS respectfully disagrees with the commenters about including specific provisions within this section describing how pat-down searches should be conducted for transgender and intersex detainees. While a facility can, on a case-by-case basis, adopt its own policies for pat-down searches of transgender or intersex detainees, the agency does not believe that an additional mandatory rule is necessary in this context. DHS believes pat-down searches must be conducted in a professional manner for all detainees and is reluctant to carve out unique pat-down search standards for transgender and intersex detainees. Additional standards may make the regulation more cumbersome to implement on a day-to-day basis.

DHS declines to change the wording of §§ 115.15(j) and 115.115(f) to ''compatible agency policy,'' because once a facility adopts the standards set forth in this regulation, the facility is expected to abide by the standards in cross-gender viewing and searches. Existing agency policy will not conflict with these standards. In consideration of the commenter's concern, however, DHS has revised the final rule for clarity. The final rule now requires pat-down searches to be conducted ''consistent with security needs and agency policy, including consideration of officer safety.''

*Comment.* Multiple comments dealt with juvenile pat-down searches. One group suggested that training for employees, contractors, and volunteers having contact with juveniles must include child-specific modules. Another commenter suggested a requirement that male juveniles only be subjected to cross-gender pat-down searches in exigent circumstances.

*Response.* In addition to the ''floor'' set by this regulation, DHS has established procedures for the custody and processing of juveniles for intake or transfer to ORR. DHS also provides training related to the treatment of juveniles in basic training and in follow-up training courses on a periodic basis. For example, ICE's Family Residential Standards, applicable to juveniles in the immigration detention facility context, provide that a pat-down search shall only occur when reasonable and articulable suspicion can be documented. The standard on searches also provides a requirement for explicit authorization by the facility administrator or assistant administrator in order for a child resident fourteen years old or younger to be subject to a pat-down, requires facilities to have further written policy and procedures for such searches, and provides that such searches should be conducted by a staff member of the same gender as the detainee. The stated goal of the standard is to ensure that residential searches are conducted without unnecessary force and in ways that preserve the dignity of the individual being searched. All staff must receive initial and annual training on effective search techniques. Standards applicable to all minors held by ICE ensure that the least intrusive practical search method is employed and include similar pat-down parameters to those described above. These policies are the best practices for the agency and subsequent revisions to the final rule are unnecessary.

*Comment.* Regarding the Subpart B-specific paragraph (d), one collective group comment suggested provisions be added requiring agency policies addressing health, hygiene, and dignity in facilities, requiring replacement garments and access to showers when necessary, and allowing separate showering for transgender and intersex detainees.

*Response.* These issues are of great importance to DHS, but requiring such separate policies would be outside the scope of this rulemaking. Section 115.115(d) requires policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender, with limited exceptions.

Given the limited infrastructure of holding facilities (most do not include showers), DHS does not believe that requiring separate showering for transgender and intersex detainees is an efficient use of limited resources.

*Comment.* One commenter suggested the standards should embody American Bar Association Standards on the Treatment of Prisoners. Those standards may provide strategies and devices to allow personnel of the opposite gender of a prisoner to supervise the prisoner without viewing the prisoner's private bodily areas.

*Response.* DHS believes that the requirements set forth in §§ 115.15 and 115.115 establish sufficient safeguards to limit the cross-gender viewing of detainees by staff, and are fully consistent with the above-referenced standards.

**Accommodating Detainees With Disabilities and Detainees With Limited English Proficiency (§§ 115.16, 115.116)**

*Summary of Proposed Rule*

The standards in the proposed rule required each agency and immigration detention facility to develop methods to ensure that inmates who are LEP or disabled are able to report sexual abuse and assault to staff directly, and that facilities make accommodations to convey sexual abuse policies orally to inmates with limited reading skills or who are visually impaired. The proposed standards required each agency and immigration detention facility to provide in-person or telephonic interpretation services in matters relating to allegations of sexual abuse, unless the detainee expresses a preference for a detainee interpreter and the agency determines that is appropriate.

*Changes in Final Rule*

In response to a comment received regarding another section of the standards, DHS is modifying this language by clarifying that a detainee may use another detainee to provide interpretation where the agency determines that it is both appropriate and consistent with DHS policy.

*Comments and Responses*

*Comment.* One commenter expressed concern that further explanation, outside of ''literature describing the protection'' for detainees, is necessary.

*Response.* DHS recognizes the importance of ensuring that all detainees, regardless of disability or LEP status, can communicate effectively with staff without having to rely on detainee interpreters, in order to facilitate reporting of sexual abuse as accurately and discreetly as possible and to provide meaningful access to the agency's sexual abuse and assault prevention efforts. As a result, this standard includes other methods of communication aside from written materials to ensure that every detainee is educated on all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse. Such methods include in-person, telephonic, or video interpretive services, as well as written materials that are provided in formats or through methods that ensure effective communication with detainees who may have disabilities that result in limited literate and vision abilities.

The final standard, in conjunction with Federal statutes and regulations protecting the rights of individuals with disabilities and LEP individuals, protects all inmates while providing agencies with discretion in how to provide requisite information and interpretation services. The final standard does not go beyond that which is required by statute, but clarifies the agencies' specific responsibilities with regard to PREA related matters and individuals who are LEP or who have disabilities.

**Hiring and Promotion Decisions (§§ 115.17, 115.117)**

*Summary of Proposed Rule*

The standards in the proposed rule prohibited the hiring of an individual that may have contact with detainees and who previously engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity. The standards also required that any substantiated allegation of sexual abuse made against staff be taken into consideration when making promotion decisions. The standards in the proposed rule also required a background investigation before the agency or facility hires employees, contractors, or staff who may have contact with detainees. The standards further required updated background investigations every five years for agency employees and for facility staff who may have contact with detainees and who work in immigration-only facilities.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Commenters suggested changing the background investigation standard's language to include making the investigation a requirement for staff that work in facilities that house a mix of residents, including non-immigration inmates, but may have contact with detainees. The commenters suggest separating this requirement out from the investigation requirement for all facility staff who work in immigration-only detention facilities for purposes of clarity.

*Response.* DHS recognizes the critical importance of performing thorough background investigations as part of the hiring and promotion process. DHS remains committed to ensuring such background investigations are conducted prior to hiring new staff that may have contact with detainees, or before enlisting the services of any contractor who may have contact with detainees. However, DHS declines to expand the requirement for background investigations to include staff that work in facilities with non-immigration inmates and do not have contact with detainees due to the lack of DHS authority.

*Comment.* Commenters suggested requiring that background investigations for all employees who may have contact with juveniles must include records related to child abuse, domestic violence registries and civil protection orders. One commenter also suggested these background requirements be explicit for all new staff that may have contact with female detainees.

*Response.* DHS agrees that criminal records related to allegations that a potential employee has engaged in child abuse, domestic violence registries and civil protection orders are an important component of the background investigation. The standard background investigation process for employees and staff already includes the search of such records. Therefore, no additional changes are required.

*Comment.* A commenter recommended that DHS investigate to discover if border officers themselves have been hurt as children or adults because of the commenter's belief that if it is in their history, they will be more apt to abuse others.

*Response.* DHS declines to implement a per se rule that a past history as a victim of abuse will serve as an automatic disqualifier for employment. Past victimization is not necessarily a useful indicator of future likelihood to engage in abuse. Moreover, DHS believes that any blanket rule disqualifying past victims of abuse from employment would be discriminatory and cannot be accepted.

*Comment.* Regarding the Subpart A standard on hiring and promotion, a commenter stated that it is unclear why paragraph (g)—applying the requirements of the section otherwise applicable to the agency also to contract facilities and staff—only appears in this section on hiring and promotion issues, rather than in all standards.

*Response.* DHS included § 115.17(g) to clarify that any standards applicable to the agency also extend to any contracted facilities and staff, as well. By its terms, much of the rest of the regulation also applies to non-DHS facilities, to the extent that they meet the definition of immigration detention facility under Subpart A. Although paragraph (g) may be redundant, DHS is retaining it for clarity nonetheless.

**Upgrades to Facilities and Technologies (§§ 115.18, 115.118)**

*Summary of Proposed Rule*

The standards in the proposed rule required agencies and facilities to take into account how best to combat sexual abuse when designing or expanding facilities and when installing or updating video monitoring systems or other technology.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Evidence Protocols and Forensic Medical Examinations (§§ 115.21, 115.121)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required agencies and facilities responsible for investigating allegations of sexual abuse to adopt a protocol for the preservation of usable physical evidence as well as to provide detainee victims access to a forensic medical examination at no cost to the detainee. The standard further required that such developed protocols be appropriate for juveniles, where applicable, and that outside victim

services be available after incidents of sexual abuse to the extent possible.

In situations when the component agency or facility is not responsible for investigating alleged sexual abuse within their facilities, the proposed standards required them to request that the investigating entity follow the relevant investigatory requirements set out in the standard.

*Changes in Final Rule*

DHS made one change to this provision, providing that a Sexual Assault Forensic Examiner (SAFE) or a Sexual Assault Nurse Examiner (SANE) should be used where practicable.

*Comments and Responses*

*Comment.* With respect to forensic medical examinations, some advocacy groups commented that before a child undergoes such an examination or interview, facility officials should contact and provide advance notice to the juvenile's legal guardian or other appropriate person or entity. For unaccompanied alien children, the groups suggest requiring the agency to immediately notify and consult with HHS/ORR regarding the forensic examination and facilitate the immediate transfer upon request of ORR and the juvenile. One commenter suggested adding a provision in case a legal guardian is an alleged perpetrator, in which case the agency should be required to notify a designated state or local services agency under applicable mandatory reporting laws.

*Response.* DHS declines to make the suggested revisions because they would have no practical application in this context. First, it would not be appropriate to immediately transfer a juvenile who was sexually assaulted, even if requested by ORR and the juvenile, as the juvenile should first be referred to an appropriate medical care professional and local law enforcement agency, potentially in conjunction with the appropriate child welfare authority. Responsibility for determining who has legal authority to make decisions on behalf of the juvenile would lie with the investigating law enforcement agency and the medical provider because the juvenile would be a victim involved in a criminal investigation.

Second, juveniles in the family residential program would be present as a member of a family unit and therefore would be with an individual who possesses authority for making legal determinations for the juvenile present at the facility.

With respect to the comment about reporting abuse by a parent or guardian, DHS notes that agencies are already required by applicable state laws to report all incidents of child sexual abuse or assault, including incidents where the parent or legal guardian is the perpetrator, to designated law enforcement agencies. The law enforcement official is then responsible for ensuring that child welfare services are notified where appropriate. Therefore, the inclusion of this provision in these standards is not necessary.

*Comment.* A commenter recommended that DHS provide a means for protection from removal—including withholding of removal, prosecutorial discretion, or deferred action—while an investigation into a report of abuse is ongoing, and also require facilities to provide application information to detainee victims and, if applicable, parents, guardians, or legal representatives.

*Response.* DHS recognizes that in some cases, it may be appropriate for ICE not to remove certain detainee victims.[13] However, DHS does not believe that every detainee who reports an allegation should necessarily receive some type of relief or stay of removal. OPR has the authority to approve deferred action for victimized detainees when it is legally appropriate.

As mandated in §§ 115.22(h) and 115.122(e), all alleged detainee victims of sexual abuse that is criminal in nature will be provided U nonimmigrant status (also known as ''U visa'') information. OPR and Homeland Security Investigations (HSI) have the delegated authority for ICE to certify USCIS Form I–918, Supplement B for victims of qualifying criminal activity that ICE is investigating where the victim seeks to petition for U nonimmigrant status.

Because these are routine agency practices and subject to agency discretion, DHS has declined to make changes in the final rule to specifically address the various prosecutorial discretion methods that may be used. ICE can and will use these prosecutorial discretion methods for detainees with substantiated sexual abuse and assault claims.

*Comment.* One commenter recommended that facilities make updated lists of resources and referrals to appropriate professionals available if and when assault happens.

*Response.* DHS declines to make this recommended edit to the current provision because it is outside the scope of the provision. Section 115.53 currently requires facilities to have access for detainees to current community resources and services and should satisfy the commenter's request.

*Comment.* One collective comment from advocacy groups suggested a number of added provisions for proposed paragraph (c)'s forensic medical examination requirement. The groups suggested that the facility arrange for the examination ''when developmentally appropriate'' and that another requirement be added that the examination is performed by a SAFE or a SANE, with other qualified medical practitioners only being allowed to examine if a SAFE or SANE cannot be made available. The agency or facility would then have to document efforts to provide a SAFE or SANE. Regarding such examinations for juveniles, the groups suggested requiring that, except in exigent circumstances, the evaluations be conducted by a qualified professional with expertise in child forensic interviewing techniques.

*Response.* It is not necessary for a medical practitioner to be a SAFE or SANE to be qualified to perform a complete forensic examination. Many detention facilities are located in rural communities where there are healthcare professionals who are qualified to perform forensic exams, but may not have a SAFE or SANE designation. Adding a SAFE or SANE requirement to the provision could in some circumstances lead to delayed treatment, as there might not be a SAFE or SANE nearby to the facility. As a result, DHS declines to absolutely require use of a SAFE or SANE. DHS, however, has added to the standard that examinations should be performed by a SAFE or SANE where practicable. With respect to the comment about developmentally appropriate evaluations, DHS notes that under §§ 115.21(a) and 115.121(a), uniform evidence protocols must be developmentally appropriate.

**Policies To Ensure Investigation of Allegations and Appropriate Agency Oversight (§§ 115.22, 115.122)**

*Summary of Proposed Rule*

The standards contained in the proposed rule mandated that each allegation of sexual abuse have a

[13] *See* U.S. Immigration and Customs Enforcement, Policy No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (2011), *available at http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf* and U.S. Immigration and Customs Enforcement, Policy No. 10075.1, Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (2011), *available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.*

completed investigation by the appropriate investigative authority. Each agency and immigration detention facility would establish and publish a protocol for investigation for investigating or referring allegations of sexual abuse. All allegations received by the facility would be promptly referred to the agency and, unless the allegation did not involve potential criminal behavior, promptly referred for investigation to an appropriate law enforcement agency. Finally, when an allegation of detainee abuse that is criminal in nature is being investigated, each agency would ensure that any alleged detainee victim of criminal abuse is provided access to relevant information regarding the U nonimmigrant visa process.

*Changes in Final Rule*

DHS made one clarification to both subparts, in paragraphs (h) and (e), respectively, that replaces the term ''U nonimmigrant visa information'' with ''U nonimmigrant status information.'' This change is consistent with the term used in the Form I–918 (Petition for U Nonimmigrant Status). DHS also changed both paragraphs to make clear its intention that the information be timely provided.

*Comments and Responses*

*Comment.* In connection with the proposed requirement that each facility ensure allegations are reported to an appropriate law enforcement agency for criminal investigation, several commenters recommended that DHS remove the exception for allegations that do not involve potentially criminal behavior. One group stated that any allegation of sexual abuse as defined in proposed § 115.6 is potentially criminal.

*Response.* DHS agrees with the commenter that both appropriate agency oversight and criminal referrals are essential components of DHS efforts in this context. DHS is therefore implementing standards that require strong and transparent agency and facility protocols for reporting and referring allegations of sexual abuse. Under the regulation, covered agencies and facilities must promptly report all sexual abuse allegations to the appropriate administrative offices, without exception. Also under the regulation, covered agencies and facilities must promptly refer all potentially criminal sexual abuse allegations to a law enforcement agency with the legal authority to conduct criminal investigations.

DHS agrees that acts of sexual abuse, as defined in this regulation, most often involve ''potentially criminal behavior.'' DHS anticipates, however, that covered agencies and facilities may at times receive complaints that are framed as sexual abuse allegations, but do not rise to the level of potentially criminal behavior. For consistency with the DOJ standards, and to ensure that mandatory referrals do not deplete scarce criminal investigative resources, DHS declines to require referral to a criminal investigative entity in all cases.

*Comment.* Commenters also recommended that DHS insert a requirement that the facility head or an assignee must request the law enforcement investigation, and that the facility's own investigation must not supplant or impede a criminal one.

*Response.* DHS declines to require the facility head to request the law enforcement investigation and declines to incorporate a requirement that the facility's own investigation must not supplant or impede a criminal one. These revisions are not necessary because under this regulation, PBNDS 2011, and the SAAPID, all investigations into alleged sexual assault must be prompt, thorough, objective, fair, and conducted by qualified investigators. Furthermore, facilities are required to coordinate and assist outside law enforcement agencies during their investigations and therefore not impede those investigations. DHS declines to add the suggested language because it does not strengthen the investigative mandates that are currently in place.

*Comment.* A commenter suggested, regarding the requirement that the facility ensure incidents be promptly reported to the JIC, ICE's OPR, or the DHS OIG, as well as the appropriate ICE Field Office Director (FOD), that the language ''ensure that the incident is promptly reported'' be replaced with ''report.''

*Response.* In some cases, the incident will be reported by an ERO officer and not an employee of the facility or the facility administrator. In such cases, the facility will have met the standards of the provision by ensuring that the incident was reported while not doing the reporting itself. Therefore, DHS declines making this addition as it does not believe this change will make the provision more effective.

*Comment.* Multiple commenters suggested a requirement that the detainee victim not be removed while an investigation is pending, unless the detainee victim specifically and expressly waives this prohibition in writing. In the case of a family unit, the recommendation would require that no non-abuser family members be removed during the pending investigation. The groups also suggested the standard prevent the victim from being transferred to another facility in a way that materially interferes with the investigation of the allegation unless essential to the protection of the victim, in which case the agency must ensure that the victim continues to be available to cooperate with the investigation.

Several advocacy groups, including a number of collective advocate comments, suggested a further provision be added to require that the agency ensure the victim is not removed from the United States if the victim indicates a wish to petition for U nonimmigrant status and moves to file such a petition within a reasonable period, so long as the victim cooperates with the investigation and the allegations are not found to be unfounded. In such a case, one group suggested the agency should be required to ensure the victim is not removed before obtaining necessary certified documents to apply for such status; others suggested a bar on removal unless the U nonimmigrant petition is denied by USCIS.

*Response.* DHS recognizes that in some cases, it may be appropriate for ICE not to remove certain detainee victims.[14] However, DHS does not believe that every detainee who reports an allegation should receive some type of stay of removal. OPR has the authority to approve deferred action for victimized detainees when it is legally appropriate. As mandated in §§ 115.22 (h) and 115.122 (e), all alleged detainee victims of sexual abuse that is criminal in nature will be provided U nonimmigrant status information. OPR and HSI have the delegated authority for ICE to certify USCIS Form I–918, Supplement B for victims of qualifying criminal activity that ICE is investigating where the victim seeks to petition for U nonimmigrant status. Because these are routine agency practices and subject to agency discretion, DHS has declined to make changes in the final rule to specifically address the various prosecutorial discretion methods that may be used. ICE can and will use these prosecutorial discretion methods for detainees with

[14] *See* U.S. Immigration and Customs Enforcement, Policy No. 10076.1, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (2011), *available at http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf* and U.S. Immigration and Customs Enforcement, Policy No. 10075.1, Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (2011), *available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.*

substantiated sexual abuse and assault claims.

Furthermore, when a victimized detainee is petitioning for U nonimmigrant status, appears to have been a victim of qualifying criminal activity, and appears to meet the helpfulness requirement for the investigation or prosecution, prosecutorial discretion should be utilized by ICE. To prevent unintended removals, OPR must sign off on any ERO request to remove a victimized detainee when an investigation has been filed and is pending. DHS does not believe that adding the suggested language substantially strengthens the current provision as it is current practice and therefore DHS declines the recommendation.

*Comment.* Several commenters suggested that there be increased access to existing types of legal status for abuse survivors.

*Response.* DHS is currently able to provide detainee victims with information concerning U nonimmigrant status when the sexual abuse is criminal in nature. DHS may also effect deferred action or significant public benefit parole when appropriate. DHS declines to make additional changes in this rulemaking because any additional access to existing types of legal status for abuse victims other than what is currently authorized would be outside the scope of this rulemaking.

*Comment.* Several advocacy groups recommended the standards relating to access to U nonimmigrant status information contain more detailed requirements. A number of comments suggested expanding the provision to ensure that the information include instructions on how to apply and contact legal experts for information to assist with the process. Some of these comments suggested specifically providing that the PSA Compliance Manager (or his or her assignee)—rather than the ''agency''—should ensure the alleged detainee victim be provided access to the information, in order to clarify who has responsibility for providing the U nonimmigrant status information. One group recommended that access to U nonimmigrant status information be provided not later than two weeks following an incident.

*Response.* DHS agrees that these provisions should be more specific, and therefore has clarified the regulatory text to make clear its intention that access to the information should be provided in a timely manner—i.e., within a reasonable period of time, under the totality of the circumstances. This change is consistent with current ICE practice and responsive to the concerns highlighted by the commenters, and reserves appropriate flexibility for the agency to tailor its practice to specific circumstances. DHS notes that ICE already provides access to approved informational materials or appropriate national hotlines.

Given the potentially broad scope of this provision (which applies to all allegations of sexual assault), DHS believes that additional changes would be unnecessary and potentially counterproductive to the goal of providing timely, accurate, and useful access to information. For instance, with respect to the question of who ought to provide U nonimmigrant status information, DHS agrees with the commenter that a facility's PSA Compliance Manager is one good option for providing such information. However, ICE OPR would also provide such information pursuant to the SAAPID, section 5.7, which states that ''in cases where the allegation involves behavior that is criminal in nature, OPR, in coordination with the FOD and/or HSI SAC, as appropriate, will ensure any alleged victim of sexual abuse or assault who is an alien is provided access to U non-immigrant visa information. . . .''

DHS does not believe that including these detailed requirements in a regulatory provision or designating the PSA Compliance Manager as the individual responsible for providing the information to qualifying detainees would strengthen this provision or provide more support to the detainee. DHS notes that it also already provides such information to the public on DHS Web sites and through DHS's Blue Campaign to end human trafficking.

*Comment.* Several advocacy groups suggested that the standard require the facility head or his or her assignee to make every effort to ensure that the victim has legal counsel who can provide advice on petitions for U nonimmigrant status, unless law enforcement investigators were to determine the allegation to be unfounded.

*Response.* DHS declines to add the suggested language with respect to legal counsel. Immigration detention facilities already provide information about legal services to detainees, consistent with existing standards regarding access to the law library and other information about legal services. Facilities also facilitate access to legal counsel through visitation and communication by telephone. DHS notes that § 115.53 requires facilities to ensure detainees have access to current community resources and services.

*Comment.* One group recommended that access to U nonimmigrant status information be provided not later than two weeks following an incident.

*Response.* ICE's SAAPID, section 5.7, sets forth the agency's responsibilities for providing U nonimmigrant status information to sexual assault victims. The Directive states that OPR, in coordination with the FOD and/or HSI SAC, will ensure alleged victims of sexual abuse or assault who have made allegations involving criminal behavior will be provided access to U nonimmigrant status information. DHS believes that this policy ensures victims will have timely access to the U nonimmigrant status information. Accordingly, DHS declines to implement a two week regulatory requirement.

*Comment.* Collective comments from advocates suggested a requirement that the agency designate various qualified staff members or DHS employees to complete USCIS Form I–918, Supplement B for any detainee victim of sexual abuse who meets U nonimmigrant status certification requirements. A comment noted that this ''is meant to prevent qualified agency personnel from declining to assist a detainee with a U visa application.'' The same comment noted that in some cases, agencies do not complete the Supplement B ''because of a lack of understanding [that] completing Supplement B is not an admission of liability on the part of the agency but simply an acknowledgement that the detainee was or is likely to be helpful in an investigation.''

*Response.* U nonimmigrant status is available to victims of certain qualifying crimes under U.S. laws who assist law enforcement in the investigation or prosecution of the criminal activity. The only agencies that have authority to certify the Form I–918, Supplement B are those Federal, State, or local agencies with responsibility for the investigation or prosecution of a qualifying crime or criminal activity, including agencies with criminal investigative jurisdiction. *See* 8 CFR 214.14(a)(2). OPR and HSI have been delegated the authority for ICE to complete and certify the USCIS Form I–918, Supplement B when they are the investigating authority on a Federal case for victims of qualifying criminal activity. ERO does not have this delegated authority because ERO does not have criminal investigative jurisdiction.

In most instances where a detainee would seek to petition for U nonimmigrant status, the appropriate investigative authority and therefore the

certifying agency would be local law enforcement. With respect to the specific request that DHS prevent qualified agency personnel from declining to assist a detainee with a U nonimmigrant petition, DHS declines to set such policy in this context. DHS has clearly delegated authority to select officers who may certify a U nonimmigrant petition. These officers receive appropriate training with regard to this process and must use their professional judgment when deciding whether to certify petitions. DHS does not believe it is necessary or appropriate to require additional involvement in the certification process for U nonimmigrant petitions.

*Comment.* One commenter suggested that DHS extend the visa information provisions to include a requirement that an alleged detainee victim of sexual abuse receive notification and assistance for Special Immigrant Juvenile status and T nonimmigrant status (commonly known as the ''T visa'').

*Response.* DHS declines to accept the suggested language, as T nonimmigrant status and Special Immigrant Juvenile (SIJ) status are outside the scope of this rulemaking. Whereas an alleged incident of sexual assault of a detainee may constitute a qualifying criminal activity for U nonimmigrant status, this rulemaking is not germane to T nonimmigrant status, which is for certain victims of a severe form of human trafficking. SIJ status is applicable to an alien child who must meet certain criteria including: (1) Having been declared dependent on a juvenile court, or legally committed to or placed under the custody of a state agency, individual, or entity; (2) that the child cannot be reunified with a parent because of abuse, abandonment, neglect, or a similar reason under state law; and (3) that it is not within the best interest of the child to return to his/her home country. *See* 8 U.S.C. 1101(a)(27)(J). For those unaccompanied alien children who may seek SIJ status, DHS's custody of the unaccompanied alien child would generally be limited to 72 hours after determining that the child is an unaccompanied alien child, after which the child would be transferred from DHS custody to HHS/ORR custody. As a result, DHS would no longer have jurisdiction over the unaccompanied alien child, making notification and assistance for SIJ status outside the scope of this rule.

*Comment.* Two comments suggested standards be added—in accordance with what a comment described as standard child welfare practices when juveniles are survivors of sexual abuse—to require that if the alleged detainee victim is an ''unaccompanied alien child in removal,'' the PSA Compliance Manager or his or her assignee notify ORR immediately and facilitate the immediate transfer of the juvenile to ORR, so long as the detainee victim wishes to remain in the United States while the investigation is pending. Additionally, the groups suggest that if the detainee victim is a juvenile in a family unit and the sole parent or legal guardian in that unit has allegedly victimized any juvenile, the PSA Compliance Manager or its assignee be required to consult with the designated state or local mandatory reporting agency regarding the release and placement of all juvenile(s) in the family unit with a state or local social services agency. The group suggests that if the state or local social services agency refrains from assuming custody but a criminal or administrative investigation results in ''a finding,'' the juveniles must be deemed unaccompanied and ORR must be notified for the transfer.

*Response.* DHS declines to add the suggested language concerning this population. Unaccompanied alien children are generally transferred to an HHS/ORR facility within 72 hours. Moreover, taken together, various provisions in the regulations appropriately address the concern raised by the comment. Section 115.14 addresses issues relating to juvenile detainees. If an alleged victim is under the age of 18, §§ 115.61(d) and 115.161(d) require the agency to report the allegation to the designated state or local services agency under applicable mandatory reporting laws. Per §§ 115.64 and 115.116, upon learning of an allegation that a detainee was sexually abused, the first responder must separate the alleged victim and abuser. DHS believes the requirements in these referenced sections provide sufficient protections that adequately meet the goals of the comments' suggested changes.

**Staff Training (§§ 115.31, 115.131)**

*Summary of Proposed Rule*

The standards in the proposed rule required all employees that have contact with detainees as well as all facility staff receive training concerning sexual abuse, with refresher training provided as appropriate. The standards mandated that current staff complete the training within one year of the effective date of the standard for immigration detention facilities and within two years of the effective date of the standard for holding facilities.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* A number of advocacy group commenters objected to the timeframe for initial training. With respect to Subpart A's requirement that the agency train, or require the training of, all facility staff and agency employees who may have contact with immigration detention facility detainees within one year, one advocacy group suggested that the standard require training completion within a shorter time period of six months. With respect to Subpart B, commenters suggested that all training pertaining to holding facilities be completed within one year of this publication.

*Response.* DHS has considered these comments and determined that the proposed standard still provides the most aggressive timeframe appropriate for training in immigration detention facilities. DHS's timeframe is in line with the DOJ standard's one-year period for employees who may have contact with inmates. DHS declines to shorten the timeframe for training in holding facilities, in light of the large number of CBP personnel who will receive the training.

*Comment.* Commenters suggested that training be ongoing, with a number of groups suggesting adopting DOJ's language on mandatory refresher training every two years and refresher information on current sexual abuse and harassment policies in years when training is not required. According to some advocacy groups, the intent of the ongoing training rather than one-time training would be to ensure that staffs focus on zero tolerance and appreciation of an abuse-free environment, to allow staff to share experiences about implementation of the standards, and to increase the likelihood that training themes are internalized in daily staff-detainee interactions.

*Response.* With respect to Subpart A, the proposed rule stated that the agency or facility shall provide refresher information every two years. With respect to Subpart B, the proposed rule stated that the agency shall provide refresher information, as appropriate. DHS proposed these refresher requirements to foster a culture of awareness, without denying its component agencies the flexibility necessary to adjust refresher training requirements to respond to operational realities. Considerations include the time and cost of developing adequate training that is sufficiently tailored to

the unique immigration detention population and the time and cost for staff to participate in such training.

With respect to Subpart A specifically, DHS, through CRCL and ICE, has developed a training module on ''Preventing and Addressing Sexual Abuse and Assault in ICE Detention'' which the ICE Director required in ICE's 2012 SAAPID to have been already completed for all ICE personnel who may have contact with individuals in ICE custody and which is also required for newly hired officers and agents. This module specifically addresses the zero-tolerance policy for sexual abuse and assault, among other issues. The training has recently been updated to incorporate certain terms and language from the proposed rule, and will be updated again following this final rule. ICE believes that this training module addresses the substantive concerns expressed by the commenters.

*Comment.* One commenter suggested that contractors be included in the training requirements along with current facility staff and agency employees, and that it should be specified that the training be by DHS or using DHS-approved materials, and that the agency documentation requirement in Subpart B be applicable to contractors and volunteers in addition to employees.

*Response.* Section 115.31, outlining training requirements for detention facility staff, embraces contractors who work and provide regularly recurring services in detention facilities. The rule's definition of contractor excludes individuals, hired on an intermittent basis to provide services for the facility or the agency. These contractors, who do not provide services *on a recurring basis pursuant to a contractual agreement,* are covered under section 115.32 of these standards. These PREA standards are applicable within one year to the facilities required to implement them; PBNDS 2011 § 2.11, which is in the process of being implemented through modification agreements, which have already been implemented in a large number of over-72-hour facilities, also requires staff training on a facility's sexual abuse or assault prevention and intervention program for employees, volunteers and contract personnel and in refresher training based on level of contact with detainees, among other criteria, with the zero-tolerance policy being a requirement for having any contact with detainees. Additionally, some facilities that have not yet agreed to modification agreements are operating under PBNDS 2008, which contains a substantially similar training requirement for employees, volunteers, and contract personnel on those standards' Sexual Abuse and Assault Prevention and Intervention Program, with annual refresher training thereafter. Finally, DHS will endeavor to ensure that facilities are compliant with PREA standards as quickly as operational and budget constraints will allow, ensuring that SPCs, CDFs and dedicated IGSAs are compliant within 18 months of the effective date of this regulation. For these reasons, contractor and volunteer personnel will be adequately aware of the zero-tolerance policy.

*Comment.* Two advocacy groups suggested language be added to ensure that staff who may interact with detainees understand the training, either through a comprehension examination or through some form of verification of training.

*Response.* The mandatory training module mentioned above for ICE employees who have contact with detainees contains 10 pre-test questions and 10 post-test questions covering key teaching points. The learner must receive an 80% passing score on the post-test to receive verification of completing the training. The slides include the correct answers and additional explanation following each question. DHS is confident this training module serves the purposes of examination and verification. Once an immigration detention facility has adopted these standards, the agency will ensure pursuant to this section that all facility staff, including employees or contractors of the facility, complete similar training. Subsection (c) already requires that the agency and each facility shall document that staff have completed applicable training.

*Comment.* One commenter stated that all components of the DOJ training standard should be incorporated into the DHS standard. Another commenter recommended generally that the standard on staff training should be revisited to be in line with DOJ's standard. Similarly, the former NPREC Commissioners suggested adding the following training components from the Commission's draft standards and DOJ's final standards: The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment; the dynamics of sexual abuse and sexual harassment in confinement; the common reactions of sexual abuse and sexual harassment victims; and how to detect and respond to signs of threatened and actual sexual abuse. The former Commissioners and other groups also expressed concern that the provision should include training on sensitivity to culturally diverse detainees, some of which may have different understandings of acceptable and unacceptable sexual behavior.

*Response.* The DHS provision regarding staff training provides detailed and comprehensive expectations for training. DHS rejects using the DOJ standard's exact language because DHS's standard provides the agency greater flexibility to ensure that the provision is consistent with existing detention standards. ICE's current training curriculum focuses on promoting techniques of effective communication with detainees from all backgrounds and in a variety of settings. The curriculum is a skills-based approach that emphasizes the importance of interacting with all detainees in a culturally sensitive manner. ICE intends to continue to provide such training, and to modify it as necessary in the coming years. ICE does not believe, however, that an independent regulatory requirement to conduct such training would meaningfully enhance the experience of ICE detainees.

*Comment.* Some advocacy groups focused on need for specifically addressing training for juveniles for employees who may be in contact with them. A collection of groups suggested a training requirement in this area that would include factors making youth vulnerable to sexual abuse and sexual harassment; adolescent development for girls and boys, including normative behavior; the prevalence of trauma and abuse histories among youth in confinement facilities; relevant age of consent and mandatory reporting laws; and child-sensitive interviewing techniques.

*Response.* DHS appreciates the commenter's input, and will consider including this information in future curricula. For purposes of this rulemaking, however, DHS is satisfied that the current list of training requirements in regulation is sufficiently detailed to accomplish the core goal, while leaving the agency flexibility to prioritize and develop training on additional topics over time. As noted above, the current list of topics is consistent with existing detention standards (PBNDS 2011, PBNDS 2008, and FRS) covering approximately 94% of ICE detainees, on average, excluding those detainees who are held in DOJ facilities (and are therefore covered by the DOJ rule). Additionally, regarding training geared toward juveniles, all ICE Field Office Juvenile Coordinators (FOJCs) are required to attend training to fulfill their responsibilities to find suitable placement of juveniles in

facilities designated for juvenile occupancy, and all ERO officers undergo basic training that includes a juvenile component. FOJCs are trained in the demeanor, tone and simple type of language to use when speaking to all minors and on the importance of building rapport with them to reinforce a feeling of safety. Maintaining flexibility to adapt these training requirements through policy will ensure employees in contact with juveniles are trained based upon the most current developments relating to juvenile interaction and protection.

*Comment.* One group suggested adding a requirement that training be tailored to the gender of the detainees at the employee's facility, with the employee receiving additional training if reassigned from a facility that houses detainees of only one sex to a facility housing only detainees of the opposite sex.

*Response.* As with the comment immediately above, DHS intends that all detainees be protected from sexual abuse and assault through implementation of comparable measures across the board for all detainees in covered facilities. Additionally, DHS has considered general concerns about employee transfer and is confident that the training standard's requirement for refresher information, both in Subpart A and in Subpart B, will address the potential for any changes in training needs over time or between facilities.

*Comment.* An advocacy group expressed concern about the provision in paragraph (a)(7) regarding training on effectively and professionally communicating with detainees, including lesbian, gay, bisexual, transgender, intersex, and gender non-conforming (LGBTIGNC) detainees, stating that the standard should extend further to include sensitivity training. Another group suggested this provision also explicitly include detainees who do not speak English, and detainees who may have survived trauma in their countries of origin.

*Response.* DHS has considered these suggestions; however, the 2012 SAAPID—which requires training for all ICE personnel who may have contact with individuals in ICE custody—provides for training on vulnerable populations, including ensuring professional, effective communication with LGBTIGNC detainees and other vulnerable individuals. The 2012 SAAPID also includes training on accommodating LEP individuals. DHS believes these training requirements to be sufficient to address the concerns regarding sensitivity for LGBTIGNC, LEP, and trauma survivor detainees. For the same reasons expressed above, DHS declines to incorporate these requirements into the regulation.

*Comment.* One group suggested replacing the training provision in paragraph (a)(8) regarding procedures for reporting knowledge or suspicion of sexual abuse with training on ''how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures.''

*Response.* DHS believes it is not necessary to broaden proposed paragraph (a)(8) in this way. The intent of the enumerated requirements in paragraph (a) was to designate specific elements of sexual abuse training which are mandated for all employees who have contact with detainees and for all facility staff. Additionally, paragraph (a) of each provision already requires generally that training for facility staff as well as employees, contractors, and volunteers, respectively, address fulfilling the responsibilities under each Subpart's standards. The proposed revision would be redundant and potentially confusing.

*Comment.* A group suggested adding a training provision on complying with relevant law related to mandatory reporting of sexual abuse to outside authorities.

*Response.* DHS has considered this comment and determined that proposed paragraphs (8) and (9) requiring training on various aspects of reporting sexual abuse or suspicion of abuse are sufficient to cover this and other aspects of reporting.

**Other Training; Notification to Detainees of the Agency's Zero-Tolerance Policy (§§ 115.32, 115.132)**

*Summary of Proposed Rule*

The standard in § 115.32 of the proposed rule required all volunteers and contractors at immigration detention facilities that have contact with detainees receive training concerning sexual abuse. The standard in § 115.132 of the proposed rule required the agency to make public its zero-tolerance policy regarding sexual abuse and ensure that key information regarding the policy is available for detainees.

*Changes in Final Rule*

DHS clarified that the training requirements in the Subpart A standard apply to contractors who provide services to the facility on a non-recurring basis. DHS also revised the title of the standard for clarity and consistency. As noted above, contractors who provide services to the facility on a recurring basis are covered by § 115.31.

DHS also removed the word ''may'' from paragraph (c) of the same standard, for consistency with paragraph (a). Prior to the change, the substantive training requirement in this section applied to those ''who have contact with detainees,'' but the documentation requirement applied to those ''who may have contact with immigration detention facility detainees.''

*Comments and Responses*

*Comment.* One advocacy group was concerned that the training requirements applicable to contractors and volunteers should be the same as described in proposed § 115.31(a) for employees, with additional training being provided based on the services the individuals provide and level of contact they have with detainees.

*Response.* DHS has considered this suggestion; however, because immigration detention facilities host a wide range of volunteers and specialized contractors who provide valuable services to facilities and detainees, requiring the same training level for these individuals may result in a reduction or delay in services. The proposed separate unique standard in Subpart A allowing for areas of flexibility for volunteers and other contractors who provide services on a non-recurring basis was determined to be more sufficient to accomplish the core education goal without unintended impact. The standard sets a ''floor'' for basic training under the regulation, but also directs additional training for volunteers and other contractors based on the services they provide and level of contact they have with detainees.

*Comment.* A comment from an advocacy group raised the same concerns with this standard regarding the timeframe prior to initial training, the lack of mandatory refresher training, and lack of an examination to test each trainee's comprehension.

*Response.* DHS declines to make any changes to § 115.32 for the same reasons described regarding these suggested changes to §§ 115.31 and 115.131.

*Comment.* Some commenters were concerned that there should be a requirement that these types of facility workers receive comprehensive training, including LGBTI-related training. An advocacy group suggested training for volunteers and contractors include child-specific modules and prevent re-victimization of children who are victims of sexual abuse.

*Response.* DHS appreciates the commenter's input, and will consider

including this information in future curricula. For purposes of this rulemaking, however, DHS is satisfied that the current list of training requirements in regulation is sufficiently detailed to accomplish the core goal, while leaving the agency flexibility to prioritize and develop training on additional topics over time. As noted above, the current list of topics is consistent with existing detention standards.

*Comment.* A group suggested the standard should include a time limit in which volunteers or contractors must be trained to prevent ambiguity over the timing for these types of individuals to come into compliance before contact with detainees would be forbidden.

*Response.* The final rule is effective May 6, 2014. Covered facilities must meet the requirements of § 115.32 by the date that any new contract, contract renewal, or substantive contract modification takes effect.

*Comment.* One advocacy group suggested that DHS develop comprehensive training materials, including information about conducting appropriate, culturally-sensitive communication with immigration detainees and how staff can fulfill their responsibilities under the PREA standards.

*Response.* DHS agrees with this suggestion, but does not believe additional rule revisions are necessary. Paragraph (a) of the Subpart A standard already requires a facility to ensure that all volunteers and contractors who have contact with detainees have been trained on their responsibilities under the agency's and the facility's sexual abuse prevention, detection, intervention and response policies and procedures. DHS will take reasonable steps to ensure that staff, contractors, and volunteers are familiar with and comfortable using appropriate terms and concepts when discussing sexual abuse with a diverse population, and equipped to interact with immigration detainees who may have experienced trauma.

**Detainee Education (§ 115.33)**

*Summary of Proposed Rule*

The standard in the proposed rule mandated that upon custody intake, each facility provide detainees information about the agency's and the facility's zero-tolerance policies with respect to all forms of sexual abuse, including instruction on a number of specified topics.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One commenter stated that the standards should contain additional explanation to detainees regarding the PREA standards beyond the explanations, information, notification, and orientation descriptions in the proposed standard. The commenter was concerned that detainees fear reporting seemingly based upon potential retaliation.

*Response.* Paragraph (a) of the proposed standard already required that, at a minimum, the intake process at orientation contain instruction on, among other areas, ''Prohibition against retaliation, including an explanation that reporting sexual abuse shall not negatively impact the detainee's immigration proceedings.'' DHS believes this explicitly enumerated content requirement, along with the other five minimum requirements, are sufficient to address the commenter's concern.

*Comment.* One advocacy group expressed concerns that the proposed standard failed to address the education of current detainees who will not receive the information at the time of their intake; the commenting group suggested such detainees be required to complete the education within a relatively short specified period of the effective date of the DHS standards, such as one month.

Some commenters expressed concerns over the potentially overwhelming nature of the amount of information contained in an up-front education requirement and the possibility that detainees may not fully understand DHS's multi-faceted initiative upon intake, a potentially stressful time.

A number of advocacy groups suggested adding a 30-day time period following intake for completion of instruction on all the areas that were to be addressed upon intake in the proposed standard; within this period, the agency would provide comprehensive education to detainees either in person or through video.

One group suggested requiring facilities to repeat PREA education programs every 30 days, of which the detainee could opt out.

*Response.* The average length of stay in immigration detention facilities is approximately 30 days, and the median length of stay is shorter still—8 days. Thus it is common that a detainee will be confined in a facility for less than one month, and it would not be practical or effective to place a one-month-from-effective date requirement for education for those detainees who have already gone through intake prior to the effective date of the final rule.

Likewise, there would not be a practical need to provide refresher education after 30 days from intake; this negates the need for any opting-out of such refresher education. Providing the information up-front to detainees is not only the most practical solution given the nature of immigration detention, but also ensures the detainee is informed at the earliest point possible to maximize prevention of sexual abuse and assault.

After the intake education and in cases where intake has taken place prior to the effective date of this final rule, detainees can refer back to aids such as the Detainee Handbook and posters with sexual abuse prevention information, as needed.

*Comment.* Some commenters suggested that additional information should be conveyed to detainees, including information regarding their legal rights. One advocacy group suggested revising the provision on the Detainee Handbook to require that the Handbook contain more comprehensive information, including detainees' rights and responsibilities related to sexual abuse, how to contact the DHS OIG and CRCL, the zero-tolerance policy, and other policies related to sexual abuse prevention and response.

*Response.* DHS agrees that the information described is important for protecting detainees. Accordingly, DHS has already required public posting and distribution of similar information under paragraphs (d) and (e) of the proposed standard. ICE's Detainee Handbook contains detailed information about sexual abuse and assault, including definitions for detainee-on-detainee and staff-on-detainee sexual abuse and assault; information about prohibited acts and confidentiality; instructions on how to report assaults to the facility, the FOD, DHS, or ICE; next steps after a sexual assault is reported; what to expect in a medical exam; understanding the investigative process; and the emotional consequences of sexual assault. DHS believes that in addition to the paragraphs (d) and (e), the information provided in the Detainee Handbook provides sufficient protection to address the commenters' concerns. ICE will review and update the Detainee Handbook as necessary or useful.

*Comment.* One group suggested requiring that upon a detainee's transfer to another facility, the detainee receive a refresher of the facility's sexual abuse prevention, detection, and response standards.

*Response.* A general orientation process that includes the information

described in this standard is a requirement each time a detainee enters a new facility, including when transferred from another facility; therefore, it is not necessary to create a separate standard regarding refresher information upon an immigration detainee's transfer.

*Comment.* Regarding the proposed standard to ensure education materials are accessible to all detainees, one advocacy group suggests adding a requirement that if a detainee cannot read or does not understand the language of the orientation and/or Handbook, the facility administrator would provide the material using audio or video recordings in a language the detainee understands, arrange for the orientation materials to be read to the detainee, or provide a translator or interpreter within seven days.

*Response.* DHS understands the concern expressed by this comment; however, the standards found in §§ 115.16 and 115.116 regarding accommodating LEP detainees are adequate to address any problems with accessibility with respect to orientation materials. Under those provisions, the agency and each facility must ensure meaningful access to all aspects of the agency's and facility's efforts to prevent, detect, and respond to sexual abuse—which would include the education requirements at orientation. Moreover, DHS policy addresses DHS-wide efforts to provide meaningful access to people with limited English proficiency. Information regarding these efforts is publicly available at the following link: *http://www.dhs.gov/department-homeland-security-language-access-plan*. To further strengthen §§ 115.16 and 115.116, DHS revised the language to require the component and each facility to provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and the agency determines that such interpretation is appropriate and consistent with DHS policy.

*Comment.* Some members of Congress commented generally that the standard regarding detainee education should be revised to be in line with DOJ's standard.

*Response.* DHS's detainee education provision is detailed and comprehensive. It is also tailored to the unique characteristics of immigration detention and the variances among confinement facilities for DHS detainees. DHS believes that merely repeating the DOJ standard would be inappropriate in this context. The major difference between the two Departments' standards is that DOJ is responsible for ensuring that current inmates receive the PREA education within one year of the rule's implementation. DHS's detainee population has an average length of stay of 30 days, resulting in a much more transient population. To ensure that all current detainees receive the PREA-related information, DHS relies on several material sources posted throughout the facilities, such as handbooks, pamphlets, notices, local organization information, PSA Compliance Manager information, etc. For those detainees that are LEP, visually impaired, or otherwise disabled, DHS provides the necessary resources, such as interpreters, for those detainees to still obtain the knowledge that is provided by the posted visuals.

**Specialized Training: Investigations (§§ 115.34, 115.134)**

*Summary of Proposed Rule*

The standards in the proposed rule required that the agency or facility provide specialized training to investigators that conduct investigations into allegations of sexual abuse at confinement facilities and that all such investigations be conducted by qualified investigators.

*Changes in Final Rule*

DHS is adopting the regulation as proposed, with a minor technical change clarifying the scope of the documentation requirement.

*Comments and Responses*

*Comment.* Some commenters suggested additional details of the specialized investigative training be expressly required by the standard, including techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required for administrative action or prosecution referral. One group suggested the standard expressly require this specialized training to be separate from staff training.

*Response.* DOJ's final rule regarding specialized training standardizes training for a broad spectrum of federal, state and local investigators. DHS is not faced with the same challenges and maintains direct control over investigators and their training. DHS believes that its current policies and procedures effectively govern specialized training for investigators. General training on investigation techniques is included in OPR Special Agent Training and is covered in OPR's Investigative Guidebook and other internal policies and training. In addition, ICE's 2012 SAAPID prescribes more detailed requirements for the content of specialized investigator training, requiring that such training for agency investigators cover, at a minimum, interviewing sexual abuse and assault victims, sexual abuse and assault evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process. DHS believes that this standard maintains a proper focus on PREA implementation—training tailored for sexual abuse detection and response through the investigative process.

DHS declines to require the specialized training provision to state that such training be provided separately from staff training. The fact that the PREA standards differentiate between staff training and specialized training and specifically denote the types of agency employees and facility staff who must participate demonstrate DHS's commitment to ensuring that additional higher-level training will be provided to those who require it.

*Comment.* One group requested clarification in the standard as to whether DHS intends the specialized training apply to persons responsible for investigations in state, local, or private facilities, in addition to training for ICE and CBP personnel.

*Response.* To clarify, while the agency is responsible for and will be directly training its own personnel in this manner, the standard also requires each facility to train their own personnel that will be working on the investigations addressed in the standard. Any criminal investigations will continue to be handled by the relevant outside law enforcement personnel.

*Comment.* One group suggested a provision be added expressly requiring that investigators receive the training mandated for employees and for contractors and volunteers under §§ 115.31 and 115.32, respectively.

*Response.* Paragraph (a) of this section makes clear that investigators must receive the general training mandated for employees and facility staff under § 115.31, in addition to the specialized training outlined by § 115.34.

**Specialized Training: Medical and Mental Health Care (§ 115.35)**

*Summary of Proposed Rule*

The standard in the proposed rule required that the agency provide specialized training to DHS employees who serve as medical and mental health practitioners in immigration detention facilities where such care is provided.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Commenters suggested that the standard be expanded for medical and mental health practitioners. These commenters made the following recommendations:

1. Practitioners who are not DHS or agency employees but who work in the facilities should receive similar specialized training, and any facility that does not use DHS medical practitioners should provide training for its own medical providers;
2. Such practitioners should receive the training mandated for employees and for contractors and volunteers under §§ 115.31 and 115.32, respectively, depending upon the practitioner's status at the agency;
3. The agency should maintain documentation that medical and mental health practitioners have received and understand the training, either from the agency or elsewhere;
4. The practitioners should receive special training for sensitivity to culturally diverse populations, including appropriate terms and concepts to use when discussing sex and sexual abuse, and sensitivity and awareness regarding past trauma that may have been experienced by immigration detainees;
5. The training be universally implemented and ingrained into the work of all employees, contractors, and volunteers coming into detainee contact; and
6. A number of groups suggested that the standard contain training specifically on LGBTI issues, including training to ensure competent, appropriate communications with LGBTIGNC detainees.

*Response.* With respect to the first recommendation, DHS believes that adding standards requiring facility medical staff to receive training to ensure that victims of sexual abuse are examined and treated thoroughly and effectively is redundant. The staff are already receiving the necessary training provided through § 115.35(c). Adding more specific criteria in this section concerning specialized training to medical providers would make the regulations redundant and cumbersome. DHS declines to make this revision.

With respect to the second and third recommendations, DHS believes that adding standards mandating that practitioners receive the training under §§ 115.31 and 115.32, respectively, would also be redundant. The medical and mental health practitioners would already be obligated to receive the training required under §§ 115.31 and 115.32, as the positions fall under the definitions of staff, contractor, and volunteer listed in § 115.5 of this final rule. Under §§ 115.31 and 115.32 the training the practitioners receive would then be documented; as such DHS declines to make this revision.

With respect to the fourth recommendation, DHS believes that adding standards for sensitivity to culturally diverse populations, including appropriate terms and concepts to use when discussing sex and sexual abuse, and sensitivity awareness regarding past trauma that may have been experienced by immigration detainees, would be superfluous and potentially beyond DHS's relative expertise when compared to the extensive training on medical and mental health care already received by certified medical health care professionals. Furthermore, any new or additional terms or concepts will likely be taught during the required training described in § 115.35(c). Adding this specific requirement to this standard would also be redundant and therefore, not add to the goal or integrity of the rule. DHS declines to make this revision.

With respect to the fifth recommendation, DHS believes that additional revisions are unnecessary to ensure that training is universally implemented and ingrained into the work of all employees, contractors, and volunteers coming into detainee contact. The portions of this regulation on training and education are designed to ensure that all employees, contractors, and volunteers are trained and educated to prevent, detect and respond to sexual abuse of detainees while in DHS custody. Inserting additional explicit requirements would be redundant. DHS therefore declines to revise the proposed rule in response to this comment.

With respect to the sixth recommendation, DHS believes that adding a standard requiring training specifically on LGBTI issues, including training to ensure competent, appropriate communications with LGBTI detainees, would be redundant to current ICE practice and policy, as well as provisions of the proposed rule. The 2012 SAAPID—required to have been already completed for all ICE personnel who may have contact with individuals in ICE custody and required for newly hired officers and agents—provides training on vulnerable populations, including ensuring professional, effective communication with LGBTI detainees. Furthermore, under §§ 115.31 and 115.131, practitioners will already be required to receive training relating to this population of detainees. Section 115.32 requires practitioner volunteers and contractors to receive similar training as well, due to their close level of contact to most if not all detainees. DHS therefore declines to revise the proposed rule in response to this comment.

*Comment.* One advocacy group suggested that in paragraph (a), the basic specialized training provision of the standard, the qualifier ''where medical and mental health care is provided'' be removed to clarify in the agency's detention standard that all immigration detention facilities should provide access to medical and mental health care.

*Response.* Views on the general structure of immigration detention facility medical and mental care are outside the scope of this rulemaking.

**Assessment for Risk of Victimization and Abusiveness (§§ 115.41, 115.141)**

*Summary of Proposed Rule*

The standards in the proposed rule mandated that the facility assess all detainees on intake to identify those likely to be sexual aggressors or sexual victims and required that the detainees be housed to prevent potential sexual abuse. The standard for immigration detention facilities further required that the facility reassess each detainee's risk of victimization or abusiveness between 60 and 90 days from the date of initial assessment as well as any other time when warranted to avoid incidents of abuse or victimization.

*Changes in Final Rule*

Sections 115.41 and 115.141 of the final rule have been revised to require that assessments for risk of victimization or abusiveness include an evaluation of whether the detainee has been previously detained in addition to previously incarcerated. A technical revision also is incorporated into § 115.41(a) to clarify that the victims that the provision describes are sexual abuse victims.

*Comments and Responses*

*Comment.* A number of advocacy groups suggested that among the risk

factors listed in the standard, DHS should also require the facility to consider whether a detainee is ''perceived'' to be LGBTIGNC. (The proposed rule focused on whether the detainee ''has self-identified'' as LGBTIGNC.) Commenters argued that the risk of sexual victimization for those who are perceived as LGBTIGNC is similar to the risk of sexual victimization for those who self-identify as LGBTIGNC.

*Response.* DHS disagrees with the addition of ''perceived'' LGBTIGNC status to the criteria which facilities must consider in assessing detainees for risk of sexual victimization would assist in accurate identification of likely victims. Unlike self-identification as LGBTIGNC (currently included in paragraph (c)(7) of the standard), a detainee's ''perceived'' LGBTIGNC status cannot be reliably ascertained by facility staff as it will vary based on individual perceptions and cannot be standardized. In addition, a requirement for facility staff to make subjective determinations regarding an individual's LGBTIGNC status may lead to potentially discriminatory decisions by staff.

*Comment.* Some commenters and advocacy groups encouraged DHS to consider options other than detention for vulnerable populations. For example, some groups suggested requiring that vulnerable individuals—including LGBT and mentally ill detainees—should be detained in only extraordinary circumstances or be candidates for alternatives to detention under the standards, including humanitarian parole, bond release, in-person and telephonic check-ins, or electronic monitoring. Others suggested that LGBT individuals or sexual abuse victims who cannot be safely housed by the government be released or granted prosecutorial discretion rather than be detained.

*Response.* DHS believes that existing ICE screening methods and practices sufficiently address the concern expressed by these commenters. The agency's Risk Classification Assessment (RCA) instrument evaluates the potential vulnerability of all individuals apprehended by ICE to determine whether detention is appropriate, or whether some form of release under supervision or alternatives to detention may be preferable. RCA screenings consider a wide range of factors that may represent a special vulnerability in the custody context, including physical or mental illness or disability, sexual orientation/gender identity, and prior history of abuse or victimization, among others.

*Comment.* A collection of advocacy groups suggested adding the word ''abuse'' to paragraph (a) when describing intake identification of potential victims, which would seemingly more fully describe the kind of potential sexual victimization.

*Response.* DHS agrees with the concern expressed in this comment and has made the recommended change.

*Comment.* Two collective comments from many groups also suggested explicitly requiring that the vulnerability assessments be conducted using an objective screening instrument, to ensure useful assessments and avoid any confusion.

*Response.* DHS believes that §§ 115.41 and 115.141 as currently written clearly set forth the factors that a facility must consider to adequately assess detainees for risk of sexual victimization. With respect to Subpart A, ICE's current screening methods for assigning detainees to a particular security level employ the standardized RCA instrument to guide decision-making using objective criteria and a uniform scoring system; in addition, the specific criteria in the regulation complement already existing classification requirements in ICE's detention standards that are designed for the purpose of assigning detainees to the least restrictive housing consistent with safety and security. If DHS were to require the use of an objective screening instrument in all immigration detention facilities, the cost of developing and implementing such an instrument in all covered facilities would be prohibitive for ICE.

*Comment.* With respect to paragraph (c), which sets forth additional considerations for the assessment for risk of victimization, commenters suggested adding a provision that the facility consider information made available by the detainee through the assessment process. Additionally, they suggest revising the ''previous incarceration'' factor to also include previous detention.

*Response.* The proposed and final rule mandate that information made available by the detainee through the assessment process be considered as part of the screening, through the requirement at paragraph (c)(9) that facilities consider ''the detainee's own concerns about his or her physical safety.'' DHS accepts the proposed revision to paragraph (c)(4) to require that previous detention history, as well as previous incarceration history, be considered.

*Comment.* One commenter suggested a requirement that female detainees and minors be screened, assessed, and provided with treatment during confinement.

*Response.* The proposed and final rules clearly require that female detainees and minors be afforded each of the protections outlined by the standards, including with regard to screening, assessment, and treatment.

*Comment.* A commenter suggested adding a specific requirement for assessment with respect to juvenile detainees (including juvenile overnight detainees in the holding facility context). The comment suggested that qualified professionals conduct such assessments out of sight and sound of any adult detainees outside of the family unit, and that if a family unit member is suspected of posing a danger to the health or well-being of the juvenile, qualified professionals conduct such assessments out of sight and sound of all adult detainees.

*Response.* Juveniles in custody as part of the Family Residential Program pursuant to § 115.14 are accompanied by an adult family member who would be present during any questioning, unless the presence of the adult would pose a risk to the juvenile.

Moreover, DHS believes that §§ 115.14 and 115.114, in conjunction with §§ 115.41 and 115.141, provide sufficient, comprehensive protection to juvenile detainees in immigration detention and holding facility settings. The §§ 115.14 and 115.114 standards ensure that the need to protect the juvenile's well-being (and that of others) is observed, while providing that the juvenile be detained in the least restrictive setting appropriate to the juvenile's age and special needs. They also reinforce the importance of any other applicable laws, regulations, or legal requirements.

Sections 115.41(a) and 115.141(b) are intended to ensure the safety of all detainees (including juveniles) who may be held overnight in holding facilities with other detainees. Paragraph (c) in both sections also makes certain that the agency considers the age of the detainee as a criterion in assessing the detainee's risk for sexual victimization. This standard, as proposed and in final form, is consistent with DOJ's standards and—in conjunction with §§ 115.14 and 115.114—will protect juveniles in holding facilities.

The DHS standard provides more detailed protection than the DOJ standard by stating explicitly that staff must ask each detainee about his or her own concerns regarding physical safety. Moreover, DHS notes that it is impractical to require, in the context of holding facilities, that all conversations with juveniles take place ''out of sight

and sound.'' Given the many facilities that fall within the definition of holding facilities, separate spaces are not always available. Finally, DHS notes that unaccompanied alien children, as defined by 6 U.S.C. 279, are generally transferred to an HHS/ORR facility within 72 hours.

**Use of Assessment Information (§ 115.42)**

*Summary of Proposed Rule*

The standard in the proposed rule required the facilities to use the information obtained in the risk assessment process to separate detainees who are at risk of abuse from those at risk of being sexually abusive. The proposed standard provided that facilities shall make individualized determinations about how to ensure the safety of each detainee, and required that, in placing transgender or intersex detainees, the agency consider on a case-by-case basis whether a placement would ensure the detainee's health and safety, and whether the placement would present management or security problems. The proposed standard also provided that transgender and intersex detainee placement be reassessed at least twice each year, and that such detainee's own views as to their safety be given serious consideration.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One advocacy group and some commenters suggested that the rule allow the agency to place LGBTI detainees with other LGBTI detainees on a voluntary basis, for the purpose of protecting such detainees. Similarly, commenters suggested provisions—described as being partly based on DOJ standards both regarding adult confinement facilities and civil juvenile detention facilities—that would prohibit LGBTI unit assignment solely on the basis of identification or status, but which would allow for such detainees to agree to be assigned to an LGBTI housing area, so long as detainees in any such facility, unit, or wing have access to programs, privileges, education, and work opportunities to the same extent as other detainees. Some members of Congress commented generally that the standard regarding housing of LGBTI detainees should be revisited to be in line with DOJ's standard.

*Response.* As DHS noted in the proposed rule, the proposal does not include a ban on assigning detainees to particular units solely on the basis of sexual orientation or gender identity, but requires that the facility consider detainees' gender self-identification and make an individualized assessment of the effects of placement on detainee mental health and well-being. DHS believes that retaining some flexibility will allow facilities to employ a variety of options tailored to the needs of detainees with a goal of offering the least restrictive and safest environment for individuals. DHS acknowledges that placement of detainees in special housing for any reason is a serious step that requires careful consideration of alternatives. In consideration of the risks associated with special housing, DHS takes great care to ensure that detainees who are placed in any type of special housing receive access to the same programs and services available to detainees in the general population.

*Comment.* One advocacy group suggested modifying paragraph (b) to provide that in addition to considering gender self-identification in making placement decisions, the facility should also consider sexual orientation and gender identity.

*Response.* The protections outlined in paragraph (b) of this standard are intended to address issues and concerns unique to transgender and intersex detainees, including the use of physical anatomical traits and medical assessments to appropriately classify and house individuals. DHS believes that safety and welfare concerns related to screening of gay, lesbian, bisexual, and other gender non-conforming individuals are adequately addressed by the requirements of §§ 115.41 and 115.42.

*Comment.* Regarding the same paragraph, commenters suggested that the first sentence be clarified to state more specifically that ''[i]n deciding whether to assign a transgender or intersex inmate to a facility for male or female detainees, and in making other housing and programming assignments, the agency or facility'' is to consider the issues included in the proposed provision. The stated purpose of this change is to ''put[] facility staff on clear notice that transgender detainees can be housed based on their gender identity.''

*Response.* As recommended by the commenters, the proposed and final rules prohibit facilities from making placement decisions for transgender or intersex detainees solely on the basis of identity documents or physical anatomy. Covered facilities making assessment and housing decisions for a transgender or intersex detainee must consider a variety of factors, including the detainee's gender self-identification and health and safety needs, the detainee's self-assessed safety needs, and the advice of a medical or mental health practitioner.

DHS declines to incorporate the additional specific reference to single-gender facilities, to maintain flexibility to address these issues through guidance, on case-by-case basis, and consistent with developing case law.

*Comment.* One comment suggested applying the rest of the paragraph to the ''agency'' as well as facilities. This change would require the agency to consider the relevant factors not only once the detainee has arrived at a given facility, but before sending the detainee to that facility. This could eliminate the need to transfer a transgender or intersex detainee from one single-gender facility to another.

*Response.* DHS declines to make the additional suggested changes. Although the PREA standards do not specifically state that the agency consider enumerated factors for transgender and intersex detainee placement, they do provide effective guidelines for assessing risk for all detainees pursuant to § 115.41. This section mandates that the facility use the risk assessment information to inform assignment of detainees to housing, recreation and other activities, and volunteer work. This section also describes additional factors for the facility to use in its assessment of transgender and intersex detainees in particular and requires the agency to make individualized determinations to ensure the safety of each detainee. Because DHS, unlike DOJ, has more direct oversight regarding the treatment of all detainees in immigration detention facilities, DHS determined that requiring the agency to also use the risk assessment information would not provide additional protections for transgender and intersex detainees, and could cause operational confusion about the facility's responsibilities under this section.

*Comment.* Commenters suggested adding a prohibition on any facilities, for the purpose of preventing sexual abuse, adopting restrictions on detainees' access to medical or mental health care, or on manners of dress or grooming traditionally associated with one gender or another. One comment suggested there could be constitutional concerns if such access were to be restricted.

*Response.* DHS has determined that an explicit prohibition against restrictions on access to medical or mental health care is unnecessary. Access to medical or mental health care that is medically necessary and appropriate may not be limited under ICE's detention standards. In addition,

grooming and dress requirements are generally outside the scope of this rule. Neither the NPREC Commission Report nor the DOJ final rule included standards on this issue, and DHS did not raise this issue for comment in its NPRM. Although DHS declines to include in this final rule a provision on this issue, we note that as a matter of practice, ICE generally does not accept or have dress or appearance restrictions based on gender. NDS and PBNDS 2008 and 2011 reaffirm detainees' right to nondiscrimination based on gender and sexual orientation.

*Comment.* In paragraph (c), two comments suggested that the qualifying phrase ''[w]hen operationally feasible'' be removed to ensure that facilities always provide transgender and intersex detainees with the ability to shower privately.

*Response.* DHS declines to make the proposed change, based on infrastructural limitations of housing and showering capacities at many facilities. While some immigration detention facilities may have the infrastructural capacity to permit transgender and intersex detainees to shower privately, this cannot be guaranteed at all facilities. DHS therefore requires the flexibility in § 115.42 to accommodate facilities where only open shower areas exist for detainee use.

*Comment.* One commenter suggested that detainees with no criminal record should not be housed alongside criminal detainees.

*Response.* DHS believes that existing ICE classification processes and related requirements for detention facilities sufficiently address this concern, ensuring that housing decisions are based on an objective and standardized assessment of each detainee's criminal background and likely security risks.

*Comment.* A human rights advocacy group and former Commissioners of NPREC recommended that immigration detainees be housed separately from inmates; the advocacy group suggested that if cohabitation is in fact necessary, the detainees should be assigned to cells or areas that allow for no unsupervised contact between detainees and inmates. The former Commissioners stated there should be heightened protection for those immigration detainees identified as abuse-vulnerable during the screening process.

*Response.* ICE contracts with detention facilities generally require that immigration detainees be housed separately from any criminal inmates that may also be present at the facility. DHS notes that a categorical prohibition on commingling of immigration and criminal detainees may not yield sufficient benefits to justify the cost, because detention facilities generally use a classification system, like the system employed by ICE, to govern the housing and programming activities of its inmates to ensure safety.

**Protective Custody (§ 115.43)**

*Summary of Proposed Rule*

The proposed standard provided that vulnerable detainees may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made—and only until an alternative housing arrangement can be implemented. The standard also provided that segregation shall not ordinarily exceed 30 days. In addition, the proposed standard provided that, to the extent possible, involuntary protective custody should not limit access to programming.

*Changes in Final Rule*

The final standard adds a requirement for facilities to notify the appropriate ICE FOD no later than 72 hours after the initial placement into segregation, whenever a detainee has been placed in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

Upon receiving such notification, the ICE FOD must review the placement to consider its continued necessity, whether any less restrictive housing or custodial alternatives may be appropriate and available, and whether the placement is only as a last resort and when no other viable housing options exist.

The final standard clarifies that it applies to administrative segregation of vulnerable detainees for a reason connected to sexual abuse or assault. As noted below, ICE has issued a segregation review policy directive which establishes policy and procedures for ICE review and oversight of segregated housing decisions. The final standard also makes technical changes in paragraphs (a) and (b) for the purpose of clarity.

*Comments and Responses*

*Comment.* Numerous groups, including a collection of advocacy groups and former Commissioners of NPREC, criticized the language regarding the ''ordinarily'' 30-day limit on protective housing as providing too much leeway for facilities to maintain that no better alternatives were available. The groups suggested restricting more narrowly any extensions, with some groups stating there should be no exceptions to the 30-day limit, instead substituting either release and potential alternatives to detention thereafter if the detainee cannot be safely housed in a detention facility, or more appropriate housing away from the problematic facility. Another human rights group suggested requiring any facility housing detainees in administrative segregation for more than 30 days to notify the appropriate agency supervisor, to conduct a prompt review of the continuing necessity for the segregation—also recommended by the former Commissioners—and to work with the facility to establish an alternative housing situation. Some other groups suggested specific processes regarding notification of the FOD after various periods of days of administrative segregation, with one group suggesting further official notification and consideration of detainee transfer to general population in an alternate facility or placement in an alternative to the detention program.

Some groups suggested DHS consider altogether releasing victim-detainees anytime a facility cannot safely separate them without resorting to protective custody, with such custody being reserved for only limited, emergency, or exigent situations.

*Response.* A categorical 30-day limitation on the use of administrative segregation to protect detainees may not be possible depending on available alternative housing and custodial options for ensuring the safe placement of vulnerable detainees. However, DHS agrees that agency oversight over cases of administrative segregation would assist in effectuating the spirit of the standard, and has amended the standard to require agency review of such cases in order to ensure the continued appropriateness of segregation and to evaluate whether any less restrictive custodial alternatives may be appropriate and available.

Furthermore, ICE has finalized a segregation review policy directive which establishes policy and procedures for ICE review and oversight of segregated housing decisions. The ICE segregation review directive is intended to complement the requirements of PBNDS 2011, PBNDS 2008, NDS, and other applicable ICE policies. Proceeding by policy in this area is consistent with § 115.95 of the regulation, which authorizes both agencies and facilities to implement policies that include additional requirements. The directive would also be consistent with § 115.43(e) of the final rule, which requires facilities to notify the appropriate FOD no later than 72 hours after initial placement into segregation whenever a detainee has

been placed administrative segregation on the basis of a vulnerability to sexual abuse or assault.

*Comment.* With respect to supervisory staff review during administrative segregation periods, one commenter suggested that the facility administration be required to notify the FOD when a detainee has been held in segregation for 20 days. The comment also suggested the review occur each week after seven days ''for the remaining 20 days,'' rather than every week for the first 30 days and every 10 days thereafter.

*Response.* The final rule includes a change that requires facilities to notify the local ICE FOD no later than 72 hours after initial placement into segregation if a detainee has been held in administrative segregation on the basis of a vulnerability to sexual abuse or assault. The final rule also retains the other extensive review requirements contained in the proposed rule, because facility staff review of ongoing segregation placement is an effective tool. As noted above, ICE has finalized a directive for ICE to review and provide oversight of a facility's decision to place detainees in segregated housing.

*Comment.* Former Commissioners of NPREC additionally found the term ''reasonable efforts'' problematic for imprecision, stating that its interpretation could vary among facilities.

*Response.* DHS believes that ''reasonable efforts'' to provide appropriate housing for vulnerable detainees will necessarily vary across facilities, depending on available resources and the circumstances of individual cases, and cannot be defined with precision *ex ante.*

*Comment.* Regarding protective custody for juvenile detainees, one commenter suggested a maximum limit of two days. Another suggested language that would require facilities to make best efforts to avoid placing juveniles in isolation, and that would prohibit—absent exigent circumstances—agencies from denying juveniles daily large-muscle exercise and legally required education services, along with other programs and work opportunities to the extent possible. This group recommended that when isolation is necessary to protect a juvenile, the facility must document the reason it is necessary, review the need at least daily, and ensure daily monitoring by a medical or mental health professional.

*Response.* DHS has determined such a provision to be unnecessary, since unaccompanied juveniles are generally not detained in ICE's detention system for longer than 72 hours, during which time they would not be placed in protective custody. In addition, DHS notes that access to activities and other services is outside the scope of this rulemaking, except to the extent affected by standards designed to prevent, detect, and respond to sexual abuse and assault in detention facilities.

*Comment.* One advocacy group suggested a provision be added to the standard to require facilities to submit a quarterly report to ICE ERO containing statistics and reasons regarding protective custody. The provision would also require that, as part of the standards' auditing process, the agency review all instances involving the use of administrative segregation, and that—where a facility is found to have relied on segregation for purposes other than as the least restrictive means—the facility be subject to appropriate remedial measures consistent with the overall audit scheme.

*Response.* DHS believes that current facility reports to ICE regarding individual instances of protective custody, as required by ICE's detention standards, suffice to facilitate effective agency oversight of these cases. As noted above, ICE has finalized a directive for ICE to review and provide oversight of a facility's decision to place detainees in segregated housing, and this directive includes additional reporting requirements.

*Comment.* Some advocate comments, including one from former Commissioners of NPREC, suggested further oversight or record-keeping similar to DOJ's standards for facilities where protective custody or administrative segregation are implemented. A number of these groups, including two collective group comments, suggested that proposed paragraph (a) be modified or a new paragraph be created to ensure ''detailed documentation'' of the reasons for placing an individual in administrative segregation and also include ''the reason why no alternative means of separation from likely abusers can be arranged.'' The same groups also suggested similar changes—in line with DOJ's standards—to proposed paragraph (c), including documenting duration of protective custody and requiring reasonable steps to remedy conditions that limit access, including a prohibition on denial of access to telephones and counsel. In a similar vein, one group suggested the agency be informed each time a suspected victim is placed in custody. Former Commissioners suggested that any segregated individuals have access to programs, privileges, education, and work opportunities to the extent possible, but if restricted, required documentation of: the limited opportunities, the duration, and the reasons therefor.

*Response.* ICE's existing detention standards uniformly require that facilities document the precise reasons for placement of an individual in administrative segregation, as well as (under PBNDS 2008 and 2011) any exceptions to the general requirement that detainees in protective custody be provided access to programs, visitation, counsel, and other services available to the general population to the maximum extent practicable, consistent with the practices advocated by commenters. ICE has also finalized a segregation review policy directive which establishes policy and procedures for ICE review and oversight of segregated housing decisions.

*Comment.* Some groups and a collective comment of advocates suggested including a provision that would make explicit that protective custody always be accomplished in the least restrictive manner capable of maintaining the safety of the detainee and the facility; commenters expressed concern about long-term detrimental health effects from segregation. One commenter stated his belief that segregation can be used for punitive purposes rather than to protect detainees, which should be addressed.

*Response.* DHS believes the concern is adequately addressed by the revised rule, which requires that use of administrative segregation to protect vulnerable populations be used only as a last resort and when no other viable housing option exist.

*Comment.* One advocacy group suggested detailed requirements describing the minimum privileges of detainees in protective custody, including normal access to educational and programming opportunities; at least five hours a day of out-of-cell time, including at least one hour daily large muscle exercise that includes access to outdoor recreation; access to the normal meals and drinking water, clothing, and medical, mental health and dental treatment; access to personal property, including televisions and radios; access to books, magazines, and other printed material; access to daily showers; and access to the normal correspondence privileges and number of visits and phone calls, including but not limited to comparable level of contact with family, friends, legal guardians, and legal assistance.

*Response.* Existing ICE detention standards address in detail the minimum programs, services, and privileges to which detainees in segregation must be afforded access,

including recreation, visitation, legal counsel and materials, health services, meals, correspondence, religious services, and personal hygiene items, among others. DHS does not believe that this level of specificity is necessary to additionally include in this regulation.

**Detainee Reporting (§§ 115.51, 115.151)**

*Summary of Proposed Rule*

Sections 115.51 and 115.151 of the proposed rule required agencies to enable detainees to privately report sexual abuse, prohibit retaliation for reporting the abuse, and related misconduct. The proposed standards required DHS to provide instruction to detainees on how to confidentially report such misconduct. The proposed standards also required that DHS provide and facilities inform detainees of at least one way to report sexual abuse to an outside public or private entity that is not affiliated with the agency, and that is able to receive and immediately forward the detainee's reports of sexual abuse to agency officials, while allowing the detainee to remain anonymous, upon request.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Commenters expressed general concern regarding the manner in which reporting opportunities may be available. One advocacy group suggested that allowing posting of information regarding consular notification as a means to satisfy the requirement that detainees have at least one way to report sexual abuse outside the agency is inadequate because cultural or other concerns may prevent victims from being able or willing to inform an official of their government. The group also expressed concern that other avenues be available to the detainee regardless of whether detained in a holding facility. Former Commissioners of NPREC stressed the need for detainees to have the ability to report sexual abuse to non-staff outside the agency or facility, while another commenter suggested there be either a separate entity or an assigned trustworthy officer to whom a detainee could report an incident. One organization stated the standard should require proactive notification to detainees of opportunities to report crimes confidentially, one-on-one, to an auditor.

*Response.* DHS believes that these provisions adequately address the important need for detainees to have multiple methods of reporting sexual assault and abuse. This key protection requirement is reflected in the standard and in current agency practices. With regard to immigration detention facilities, detainees can report incidents in several ways, including by calling the JIC or the point of contact listed on the sexual abuse and assault posters. Detainees may also call the OIG, the Community and Detainee Helpline, or report incidents to CRCL. The Detainee Handbook and posters provide contact information to detainees and also note that detainee reports are confidential. With respect to holding facilities, detainees are provided with multiple ways to privately report sexual abuse, including reporting to the DHS OIG.

*Comment.* The former Commissioners suggested including volunteers and medical and mental health practitioners in the standard due to their unique situation of common contact with detainees.

*Response.* The purpose of this provision is to ensure that the agency and facilities create effective procedures for detainee incident reporting. Although the provision does not explicitly address reporting to volunteers or healthcare practitioners, nothing in this standard prohibits such reporting. In this connection, DHS notes that volunteers and healthcare practitioners will receive specialized training regarding how to recognize and handle detainees who have been sexually abused or assaulted and how to respond to detainee allegations. DHS believes that volunteers and healthcare practitioners will be a valuable resource for detainees, but declines to add specific regulatory provisions for individual avenues of reporting, beyond those already identified in the regulation.

*Comment.* Some members of Congress commented generally that the standard regarding abuse reports and responses to reports of abuse should be revisited to be in line with DOJ's standard.

*Response.* DHS respectfully notes that with regard to detainee reporting, the final standards are closely aligned with DOJ's inmate reporting provisions. The final standard allows for multiple ways to privately report sexual abuse, retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities.

*Comment.* One organization suggested that any translations of a detainee's complaints should be provided by a ''neutral'' translation company at no cost to the detainee.

*Response.* DHS routinely uses translation services during interviews and when taking complaints. When staff members or employees do not speak the same language as the detainee, they may use a third party translation service that is under contract with the agency. The translation service fees are not charged to the detainee and although the fees are paid by DHS, the translation companies are not otherwise affiliated with the agency.

*Comment.* An organization stated that the standard should include a provision allowing staff to report sexual abuse anonymously.

*Response.* Under the final standard staff are required to report incidents of sexual abuse, and may fulfill that obligation by reporting outside the chain of command. Separate and apart from this obligation, staff may call the JIC and OIG with anonymous reports of sexual abuse and assault. Therefore, DHS declines to add a specific regulatory provision allowing staff to report abuse anonymously.

*Comment.* The former Commissioners suggested including an explicit provision in this standard and in § 115.52 prohibiting any report by a detainee regarding sexual abuse from being referred to a staff member who is the subject of the complaint.

*Response.* DHS recognizes the importance of ensuring that alleged abusers are not involved in any way with a detainee who lodges a complaint, and agrees that referral to the subject of a complaint would be inappropriate. Accordingly, multiple provisions of this regulation separate the detainee victim from the subject of a complaint, including a requirement that the agency review and approve facility policies and procedures for staff reporting. Moreover, the regulation requires such procedures to include a method by which staff can report outside of the chain of command. More comprehensive, appropriately tailored rules will be contained therein.

Similarly, § 115.66 requires that volunteers, staff, and contractors who are suspected of perpetrating sexual abuse be removed from duties requiring detainee contact, and § 115.166 requires agency management to take appropriate action when an allegation has been made. Further, §§ 115.64 and 115.164 require covered entities, upon learning of an allegation that a detainee was sexually abused, to separate the alleged victim and abuser. Current policy would prevent an individual who is the subject of an allegation from being responsible for investigating the allegation. Taken together, these factors sufficiently address the concern that underlines the comment, and DHS declines to amend the regulatory text to further address the issue.

*Comment.* A human rights advocacy group suggested that the standard specify that detainees are able to make free, preprogrammed calls to the OIG and CRCL, and that facilities must provide access to telephones, along with contact information to reach consular officials.

*Response.* Under current agency practice, all calls made by a detainee to the OIG and the JIC are preprogrammed and free of charge. CRCL is unable to handle a large volume of calls from detainees and is not staffed outside of business hours, but detainees may send written complaints to CRCL, including by email. The standard already requires that facilities provide instructions on how detainees may contact their consular official.

*Comment.* An advocacy group and former Commissioners of NPREC recommended including a provision that DHS will not remove from the country or transfer to another facility detainees who report or make a grievance regarding sexual abuse before the investigation of the abuse is complete, except at the detainee's request.

*Response.* DHS routinely considers whether detainees are suitable candidates for alternatives to detention or prosecutorial discretion. Certainly, DHS through ICE evaluates the detention status and removal proceedings for any sexual abuse victim to determine whether the detainee should be placed on an order of supervision, released on bond, or whether he or she is eligible for a form of prosecutorial discretion such as deferred action or parole. ICE's OPR has the authority to approve deferred action for victimized detainees on a case-by-case basis where appropriate. As mandated in §§ 115.22(h) and 115.122(e), all alleged detainee victims of sexual abuse that is criminal in nature will be provided U nonimmigrant status information. OPR and HSI have the delegated authority to certify USCIS Form I–918, Supplement B for victims of qualifying criminal activity that ICE is investigating where the victim seeks to petition for U nonimmigrant status. Because these are routine agency practices and subject to agency discretion, DHS has declined to make changes in the final rule to specifically address the various methods that could be used to release a detainee victim from detention. The agency, through ICE, can and will use these methods for detainees with substantiated sexual abuse and assault claims. DHS does not believe that a uniform stay of removal for all aliens who lodge complaints is warranted.

With regard to transfers, ICE policy 11022.11, entitled Detainee Transfers, governs the transfer of all aliens in ICE custody. Pursuant to the policy, transfers are discouraged unless a FOD or his or her designee deems the transfer necessary for the following reasons: (a) To provide appropriate medical or mental health care; (b) to fulfill an approved transfer request by the detainee; (c) for the safety and security of the detainee, other detainees, detention personnel, or any ICE employee; (d) at ICE's discretion, for the convenience of the agency when the venue of DOJ Executive Office for Immigration Review proceedings is different than the venue in which the alien is detained; (e) to transfer to a more appropriate facility based on the detainee's individual circumstances and risk factors; (f) upon termination of facility use; or (g) to relieve or prevent facility overcrowding. ICE's transfer policy is designed to limit transfers for all aliens and provides adequate protection for aliens who have sexual abuse complaints or grievances.

*Comment.* One group suggested that the standard provide for young survivors of sexual abuse to have the option of release on their own recognizance and to remain lawfully in the United States during the investigation. Another organization and a collective comment of advocacy groups stated that the standard should provide for an assessment of any alleged victim who has reported abuse to determine if he or she would be safer under alternatives to detention.

*Response.* DHS routinely considers whether detainees are suitable candidates for alternatives to detention. Certainly, DHS through ICE evaluates the detention status of *any* sexual abuse victim to determine whether the detainee should be placed on an order of supervision, released on bond, or granted parole or deferred action. Because these are routine agency practices and subject to agency discretion, DHS has declined to make changes in the final rule to specifically address the various methods that could be used to release a detainee victim from detention.

*Comment.* Some commenters expressed concern in regard to both this reporting standard and other of the proposed standards that detainees may fear speaking up due to retaliation or are unlikely to report incidences of sexual abuse to officers.

*Response.* DHS acknowledges that some detainees may fear reporting sexual abuse. As such, the final standard includes §§ 115.67 and 115.167 which protect detainees from retaliation. Also, the standard as well as current practices provide multiple ways a detainees can report sexual abuse that do not involve confronting an officer or staff member.

*Comment.* One collective comment from advocacy groups suggested that DHS make explicit in paragraph (a) that the policies and procedures to be developed by the agency to ensure multiple ways of private detainee reporting are to be available while in custody and after release or removal.

*Response.* The agency recognizes the benefit to detainees of reporting incidents of sexual abuse or assault to a private entity. Detainees in immigration facilities already have access to phone numbers for many private organizations that provide assistance in response to a wide range of complaints or inquiries.

Once a detainee has been removed or is otherwise no longer in agency custody, the agency is not obligated to provide reporting procedures. However, it is available to former detainees to contact the OIG, the JIC, CRCL or a private entity to report any incidents even after they are no longer in agency custody.

**Grievances (§ 115.52)**

*Summary of Proposed Rule*

The standard contained in the proposed rule prohibited the facility from imposing any deadline on the submission of a grievance regarding sexual abuse incidents. The standard mandated that facilities allow detainees to file a formal grievance at any time before, during, after, or in lieu of lodging an informal complaint related to sexual abuse. The standard further required the facility to issue a decision on the grievance within five days of receipt.

*Changes in Final Rule*

DHS is modifying paragraph (e) by adding a requirement that the facility respond to an appeal of the grievance decision within 30 days and by requiring facilities to send all grievances related to sexual abuse to the appropriate ICE Field Office Director at the end of the grievance process.

*Comments and Responses*

*Comment.* Some commenters suggested that DHS provide additional processes and procedures for emergency grievances. One advocacy group suggested that proposed paragraph (c)'s requirement for protocol on time-sensitive, immediate-threat grievances is too open-ended, as it should set out criteria or guidance as to what facilities'

procedures should accomplish and require agency approval of the procedures. Another organization stated the filing process itself for an emergency at-risk grievance should be explicitly included in the standard, for when a detainee alleges he or she is subject to a substantial risk or imminent sexual abuse.

*Response.* The final standard is meant to enhance existing agency policies and detention standards that seek to prevent, detect, and respond to sexual abuse incidents by establishing general regulatory requirements for immigration detention facilities. ICE's detention standards provide detailed grievance procedures, including requirements for individual facility emergency grievance processes. Common elements of these procedures have been included in the regulatory language. However, the agency believes that its longstanding grievance procedures are comprehensive and adequately address the public's concerns. Furthermore, each facility's grievance procedures are inspected to ensure that they are being properly executed.

*Comment.* An advocacy group suggested that proposed paragraph (e)'s grievance-response timeframe should also include a provision adding a 30-day maximum time limit for the agency's response to an appeal of an agency's decision on a grievance.

*Response.* DHS accepts the suggested revision to the grievance appeal process described in paragraph (e) by including a requirement to respond to an appeal of the grievance decision within 30 days.

*Comment.* Regarding the substance of the grievance itself, a group suggested that the standard should require that no sexual abuse-related grievance should be denied based upon any detainee failure to properly fill out and submit a formal grievance; the substance of the grievance should be sufficient to trigger the facility's response on the merits.

*Response.* Any allegation of sexual assault is thoroughly investigated by the agency or by local law enforcement, if appropriate. The fact that a grievance form was not properly filled out or submitted would never be grounds to not investigate a detainee's abuse claim.

*Comment.* A commenter expressed concern that the standard should require facilities to provide DHS with a copy of each grievance and disposition so DHS can effectively monitor the facilities.

*Response.* DHS has revised the regulatory text to require facilities to send all grievances related to sexual abuse and the facility's decisions with respect to such grievances to the appropriate ICE Field Office Director at the end of the grievance process. In addition, facilities are required under §§ 115.89 and 115.189 to keep all grievances on file. Each facility is inspected under §§ 115.88 and 115.188 to ensure that it is following the grievance process and handling each grievance properly.

**Detainee Access to Outside Confidential Support Services (§ 115.53)**

*Summary of Proposed Rule*

The standard contained in the proposed rule required agencies to provide detainees with access to outside confidential support services and that the information about these services will be provided to them. The standard further required that detainees and these confidential support services will have reasonable communication in as private a manner as possible.

*Changes in Final Rule*

DHS is adding paragraph (d) requiring facilities to inform detainees, prior to giving them access to outside resources, of the extent to which such communications will be monitored and to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

*Comments and Responses*

*Comment.* One commenter suggested that when an assault occurs, facilities should make available to detainees updated lists of resources and referrals to professionals.

*Response.* DHS agrees that detainees should have access to resources and referrals to professionals when appropriate. The final standards adequately address these needs in this section and also in §§ 115.21, 115.81–83. This section provides that each facility use available community resources and services to provide support to detainees. In addition, § 115.53 requires facilities to maintain or attempt to enter into agreements with community service providers or national organizations that provide legal advocacy and emotional support. Section 115.33 also requires facilities to provide detainees with information about local organizations that can assist detainees. A detainee does not have to wait for his or her allegation to be substantiated before being able to use these services; the facility must make the services available much earlier on.

Section 115.21, which covers forensic medical examinations, requires facilities to make use of outside victim services following sexual abuse incidents. These services include rape crisis center information, a qualified staff member from a community-based organization, or a qualified agency staff member. Section 115.21 also provides that a forensic medical examination shall be arranged when appropriate for medical or evidentiary reasons and at no cost to the detainee.

Sections 115.81–115.83 require referrals for medical follow-up, unimpeded access to emergency medical treatment and crisis intervention services, medical and mental health evaluations, and follow-up services.

*Comment.* Commenters expressed concerns over confidentiality provisions in this standard. Regarding the outside support services, an advocacy group stated that all communications between detainees—particularly LGBTI detainees—and such organizations should remain confidential, with a detainee being notified when confidentiality of a communication is not guaranteed. Two collections of advocacy groups expressed similar concern, calling for replacing ''in as confidential a manner as possible'' with complete confidentiality, and adding requirements for an exception that—when such confidentiality is not possible—the facility document the reason(s) therefor and inform the detainee of the extent of monitoring and the extent of any forwarding of reports of abuse to authorities under mandatory reporting laws. Some members of Congress also stated that full confidentiality is necessary in communications with service providers like rape crisis counselors. Another advocacy group as well as a collection of youth, immigration and disability groups and a human rights group focused, respectively, on the specific needs for confidentiality in regard to medical and mental health care records and also trauma and support services.

*Response.* DHS agrees that it is important for all victims, regardless of their sexual orientation, to have access to confidential services. The standard requires agencies to ''enable reasonable communication between detainees and these organizations and agencies, in as confidential a manner as possible.'' Unfortunately, DHS cannot guarantee complete confidentiality in all situations, because it may be difficult for agencies to ensure complete confidentiality with all forms of communication due to factors such as the physical layout of the facility or the use of automatic phone monitoring systems, which may be difficult to suspend for support calls without requiring the detainee to make a specific request. As a result of confidentiality

concerns, DHS added paragraph (d), which will require facilities to inform detainees prior to giving them access to outside resources, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

As ICE's Detainee Handbook explains, communications between detainees and investigators are private and detainees' medical and administrative files are locked in secure areas to ensure confidentiality.

DHS encourages facilities to establish multiple procedures for detainee victims of sexual abuse to contact external advocacy and support groups. While not ensuring ideal privacy, phones may provide the best opportunity for detainees to ask for assistance in a timely manner. Privacy concerns may be addressed through other means of contacting outside organizations, such as allowing confidential correspondence, opportunities for phone contact in more private settings, or the ability of the detainee to make a request to contact an outside advocate through a chaplain, clinician, or other service provider.

**Third-Party Reporting (§§ 115.54, 115.154)**

*Summary of Proposed Rule*

Standards 115.54 and 115.154 in the proposed rule required facilities to establish a method to receive third-party reports of sexual abuse and publicly distribute information on how to report such abuse on behalf of a detainee.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Staff Reporting Duties (§§ 115.61, 115.161)**

*Summary of Proposed Rule*

The standards in the proposed rule required that staff immediately report: (1) Any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in a facility; (2) retaliation against detainees or staff who reported such an incident; and (3) any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The proposed standards prohibited the agency from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to make medical treatment, investigation, law enforcement, and other security and management decisions.

*Changes in Final Rule*

DHS now explicitly requires covered staff to report retaliation against detainees or staff who participated in an investigation of an incident of sexual abuse that occurred in a facility. Previously, the reporting requirement in these standards did not explicitly cover such retaliation (although it did cover retaliation against detainees or staff who reported an incident of sexual abuse). Otherwise, DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* A commenter suggested expanding paragraph (a) to require staff to report not only ''any knowledge, suspicion, or information regarding . . . retaliation against detainees or staff who reported'' an incident of sexual abuse, but also any knowledge, suspicion, or information regarding retaliation against detainees or staff that provided information pertaining to such an incident.

*Response.* DHS agrees that anti-retaliation measures are of paramount importance in this context, and has therefore included a range of measures, including §§ 115.67 and 115.167, intended to deter retaliatory conduct. Under these provisions, agency employees (and others) may not retaliate against any person, including a detainee, for, *inter alia,* reporting, complaining about, or participating in an investigation into an allegation of sexual abuse.

With respect to staff reporting specifically and in response to the comment, DHS revised §§ 115.61(a) and 115.161(a) to require all staff to immediately report retaliation against detainees or staff who reported or participated in an investigation about sexual abuse incidents. Prior to this revision, the reporting requirement did require reporting about retaliation against detainees or staff who reported an incident of sexual abuse, but did not explicitly cover reports of retaliation against individuals who participated in investigations.

*Comment.* An advocacy group suggested adding language to paragraph (a) that would allow staff to anonymously report sexual abuse and harassment of detainees.

*Response.* DHS agrees that it is essential for staff to have anonymous methods of reporting sexual abuse and assault incidents. Under 2006 agency policy and the SAAPID, agency staff is required to ensure immediate reporting of any incident of sexual abuse or assault by the facility to the local ICE personnel, who must then notify the ICE JIC telephonically within two hours and in writing within 24 hours. Reporting directly to the JIC allows staff to report incidents anonymously without having to report up through their chain of command. DHS believes that the allowance of anonymous reporting is adequately addressed between these policies and paragraph (a) of this standard which allows for ''methods by which staff can report outside of the chain of command.'' Because an express regulatory provision would be redundant to a number of measures that are currently in place, and because DHS believes that the anonymous reporting option must be carefully controlled to ensure that staff also meet their mandatory reporting duties properly and effectively, DHS does not believe that the recommended added language is necessary.

**Protection Duties (§§ 115.62, 115.162)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that when an agency employee or facility staff has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she must take immediate action to protect the detainee.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Reporting to Other Confinement Facilities (§§ 115.63, 115.163)**

*Summary of Proposed Rule*

The standards contained in the proposed rule mandated that upon receiving an allegation that a detainee was sexually abused while confined at another facility, the facility receiving the allegation must (1) notify the appropriate office of the facility where the sexual abuse is alleged to have occurred as soon as possible, but no later than 72 hours after receiving the allegation; and (2) document the efforts taken under this section. The agency office that receives such notification, to the extent covered by the regulation, must ensure the allegation is referred for investigation.

*Changes in Final Rule*

DHS is modifying the notification language in paragraph (a) for both § 116.63 and § 115.163 to require agencies and facilities that receive allegations of abuse at a different facility to notify the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred.

*Comments and Responses*

*Comment.* The former Commissioners of NPREC recommended that DHS define who specifically in the agency or facility is required to notify another facility, upon receiving an allegation of detainee sexual abuse in another facility. The group suggested following the DOJ PREA final rule by using the term ''facility head.''

*Response.* DHS understands the concern of confusion as to who is responsible for reporting allegations to other confinement facilities and has subsequently revised § 115.63. With regard to Subpart A, the SAAPID requires that when an alleged assault is reported at another facility, the facility receiving the allegation report it to the administrator of the facility where the alleged sexual abuse or assault occurred. DHS revised § 115.63, which complements the SAAPID, and also revised § 115.163 to now require notification to ''the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred.'' The provision allows notification to the appropriate office of the agency because in some cases the allegations may concern ICE or CBP holding facilities for which notification to the JIC would be more appropriate, for any of a range of reasons. Under the DHS standard as well as the DOJ standard, if a covered facility learns of sexual abuse in another facility, the covered facility will notify the other facility, and document such notification in writing. DHS believes that as currently written the provision satisfies the concern for facility to facility reporting and does not believe that adding ''facility head'' will strengthen the provision as currently written.

For Subpart B facilities, where detention is relatively brief, and in order to minimize delay, the agency official responsible for notifying another confinement facility of an allegation of sexual abuse will depend on which office receives the allegation. DHS believes that specifying ''facility head'' within this section will limit which office can either notify or be notified and may therefore postpone the communication between facilities which would not be in the best interest of the victim. For this reason, DHS believes that the provision will be most effective as currently written and declines to adopt the ''facility head'' language.

**Responder Duties (§§ 115.64, 115.164)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that the first employee or staff member that responds to the sexual abuse report separate the alleged victim and abuser and preserve and protect the crime scene until evidence can be collected.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Coordinated Response (§§ 115.65, 115.165)**

*Summary of Proposed Rule*

Sections 115.65 and 115.165 in the proposed rule required a multidisciplinary team approach in the response to an incident of sexual abuse.

*Changes in Final Rule*

DHS revised each standard to clarify that notification requirements related to the transfer of detainee victims of sexual abuse will differ depending on whether or not the receiving facility is covered by these standards. As in the proposed rule, when the receiving facility is not covered by these standards, the sending facility must inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise. Otherwise, DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Protection of Detainees From Contact With Alleged Abusers (§§ 115.66, 115.166)**

*Summary of Proposed Rule*

The standard in the proposed rule with respect to immigration detention facilities required the agency or facility to remove from all duties requiring detainee contact, pending the outcome of an investigation, staff, contractors, and volunteers suspected of perpetrating sexual abuse. The standard with respect to holding facilities required agency management to consider such removal for each allegation of sexual abuse, and to do so if the seriousness and plausibility of the allegation make removal appropriate.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Some commenters suggested that as with immigration detention facilities, holding facilities that have staff, contractors, or volunteers that are suspected of sexual abuse should remove such persons from all duties requiring detainee contact pending the outcome of an investigation. They believe that requiring removal is important for the protection of the victim as well as others in the facilities. An advocacy group commented that leaving § 115.166(a) unrevised will leave open the possibility for a perpetrator to continue to have access to the detainees during the reporting and investigating processes.

*Response.* DHS believes that the language used in § 115.166 is the appropriate approach to protect detainees while an investigation is pending in a holding facility. DHS recognizes the desire for consistency between Subpart A and Subpart B of the regulation. However, DHS believes that § 115.166, as proposed and in final form, appropriately addresses the unique needs associated with holding facilities, including limited staffing resources. Furthermore, § 115.166 requires supervisors to affirmatively consider removing staff pending the completion of an investigation, and to remove them if the seriousness and plausibility of the allegation make such removal appropriate (as opposed to automatically placing employees on administrative duties even where, for example, the allegations are not plausible because the subject of the allegation was not on duty at the time of the alleged incident).

With respect to ICE holding facilities, the SAAPID reinforces the regulation by requiring the removal of an ICE employee, facility employee, contractor, or volunteer suspected of perpetrating sexual abuse or assault to be removed from all duties requiring detainee contact pending the outcome of an investigation. The term ''suspected of'' is intended to allow the agency or facility a modest exercise of discretion with respect to whether any suspicion exists. By requiring that the individual be ''suspected of'' perpetrating sexual abuse and assault, DHS intends to

ensure that staff, contractors, and volunteers are not removed for plainly implausible or plainly erroneous allegations (e.g., a detainee may claim that a specific staff member assault him when, in fact, that staff member was not at the facility during the alleged incident).

DHS believes that by assigning staff, contractors, and volunteers to duties away from detainees when necessary, DHS will provide sufficient protection to detainees.

*Comment.* Some commenters suggested adding the same language that is currently in DOJ's PREA final rule concerning collective bargaining agreements. The DOJ standard prevents an agency or governmental entity responsible for collective bargaining on the agency's behalf from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's ability to remove staff suspected of perpetuating sexual abuse from contact with any inmates pending the outcome of an investigation. The commenters believe that this adjustment will prevent DHS from entering into collective bargaining agreements that frustrate the objective of the standard.

*Response.* DHS respectfully declines to add the language concerning collective bargaining agreements. DHS believes adding the language suggested by the commenters is unnecessary. The DHS rule requires affirmative steps in response to an allegation of sexual abuse. Removal from detainee interaction during the investigation process is required for staff, contractors, and volunteers suspected of perpetrating sexual abuse in immigration detention facilities. In response to an allegation of sexual abuse in a holding facility, agency management shall remove any staff, contractor, or volunteer from duties requiring detainee contact pending the outcome of an investigation, where the seriousness and plausibility of the allegation make removal appropriate. This provides a greater level of protection and requires more significant affirmative action than a limitation on collective bargaining agreements.

*Comment.* Some commenters suggested changing § 115.66 to apply not to staff, contractors, or volunteers that are ''suspected of perpetrating'' sexual abuse, but to staff, contractors, or volunteers that are ''alleged to have perpetrated'' sexual abuse.

*Response.* PBNDS 2011 uses the term, ''suspected of perpetrating.'' The use of conflicting terms could pose bargaining issues. ''Suspected of perpetrating'' allows for a modest exercise of discretion to determine whether an allegation has any reasonable basis in fact. DHS believes that the use of the term ''suspected of perpetrating'' as opposed to ''alleged to have perpetrated'' will adequately ensure the safety and security of detainees.

**Agency Protection Against Retaliation (§§ 115.67, 115.167)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that agency and facility staff and employees not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force.

*Changes in Final Rule*

DHS added a new paragraph (b) to Subpart A of the final rule which requires the agency or facility to ''employ multiple protection measures, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff that fear retaliation for reporting sexual abuse or for cooperating with investigations.''

*Comments and Responses*

*Comment.* Many commenters suggested adding language that will protect from retaliatory deportation any detainees who report, complain about, or participate in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force.

*Response.* DHS agrees that removal should never be used solely to retaliate against a detainee who reports sexual abuse. To address this concern, §§ 115.67 and 115.167 explicitly prohibit any retaliatory behavior, which is a broader form of protection and is therefore adequate to address this risk.

*Comment.* Multiple commenters suggested that the standards in §§ 115.67 and 115.167 should be replaced with the corresponding DOJ PREA standards. Some members of Congress commented generally that the retaliation standard should be revisited to be in line with DOJ's standard. One commenter notes that the DOJ PREA standards detail specific protection measures that the agency must take to ensure retaliation does not occur.

*Response.* In response to comments about aligning DHS's § 115.67 standards with DOJ's, DHS again reviewed the DOJ final rule and added a new paragraph to Subpart A of the final rule, which requires the agency to use multiple measures to protect detainees who fear reporting sexual abuse or fear cooperating with investigations.

DHS did not incorporate the language used in DOJ's paragraph (a) because DHS's language provides greater protection by prohibiting retaliation immediately, instead of relying on a policy to be drafted in the future. Given ICE's more direct oversight over its immigration detention facilities, the agency is in a better position to prohibit and take action against acts of retaliation by detainees or staff. DOJ's paragraph (d) was not incorporated for the same reason, and because status checks are redundant—for 90 days following a report of sexual abuse, the agency or facility must monitor to see if there are facts that may suggest possible retaliation by detainees or staff, and shall act promptly to remedy any such retaliation. DHS believes that its final rule is tailored effectively to immigration detention and therefore, does not need to mirror the DOJ rule to provide adequate protection to detainees.

DHS chose not to include proposed language about employing multiple protection measures in Subpart B. Given the relatively short time of detention in holding facilities, housing assignments are not applicable. Section 115.164, Responder Duties, includes a requirement to separate the alleged victim and abuser. With respect to the comment regarding providing emotional support services to staff, note that CBP offers a full range of assistance to agency employees through the WorkLife4You Program and the Employee Assistance Program.

*Comment.* One commenter suggested the addition of a paragraph in § 115.67 that would require the facility's PSA Compliance Manager, or assignee, to make sure the mandates of § 115.22 are fulfilled.

*Response.* Sections 115.11(d) and 115.111(d) already serve this function by ensuring the PSA Compliance Manager has ''sufficient time and authority to oversee facility efforts to comply with facility sexual abuse prevention and intervention policies and procedures.''

*Comment.* One commenter suggested that this standard explicitly address transferring victims as a form of retaliation or as a means of protection from alleged perpetrators.

*Response.* DHS recognizes the need to eliminate unnecessary detainee transfers. Eliminating unwarranted transfers of sexual assault victims for retaliatory reasons are a high priority for the agency. ICE Policy 11022.11,

entitled Detainee Transfers, was developed and implemented to reduce detainee transfers and specifically notes that transfers should not be conducted unless certain articulated factors are considered by the FOD or his or her designee. DHS believes that the protections afforded by ICE's transfer policy apply to all detainees, not just those who have made sexual assault allegations or those participating in investigations. Section 115.67 of these standards also includes an explicit prohibition against any form of agency retaliation against victims of sexual abuse or assault, including retaliatory housing changes.

**Post-Allegation Protective Custody (§ 115.68)**

*Summary of Proposed Rule*

The standard contained in the proposed rule required the facility to place detainee victims of sexual abuse in a supportive environment that is the least restrictive housing option possible. The standard provided that detainee victims shall not be returned to the general population until proper re-assessment is completed. The standard further required that detainee victims are not to be held for longer than five days in any type of administrative segregation, except in unusual circumstances or at the request of the detainee.

*Changes in Final Rule*

The final rule adds a requirement for facilities to notify the appropriate ICE FOD whenever a detainee victim has been held in administrative segregation for 72 hours.

Upon receipt of such notification, the final rule also requires that the ICE FOD conduct a review of the placement to consider whether the placement is only as a last resort and when no other viable housing options exist, and whether—in the case of a detainee victim held in administrative segregation for longer than five days—whether the placement is justified by extraordinary circumstances or is at the detainee's request.

*Comments and Responses*

*Comment.* One advocacy group suggested adding a statement in paragraph (b) requiring the facility to report to the agency within 24 hours the placement of suspected sexual abuse victims in protective custody.

*Response.* As noted above, the final rule adds a requirement for facilities to notify the appropriate ICE FOD whenever a detainee victim has been held in administrative segregation for 72 hours. ICE notes that it has also chosen to proceed by policy in this area, as noted above in the discussion relating to § 115.43.

*Comment.* Some commenters suggested further defining the term ''unusual circumstances'' in paragraph (b) to include the actual circumstances in which prolonged protective custody might be warranted. Commenters wrote that vulnerable detainees may request protective custody for a prolonged period of time because they are unaware of their rights.

An advocacy group suggested that the agency supervisor be notified when a detainee is placed in administrative custody for more than five days. Once the agency supervisor is notified, this person should be tasked with conducting a review of the segregation as well as looking for other placements for the detainee as long as the detainee is not subject to mandatory detention.

*Response.* The final standard includes new requirements for agency notification whenever an individual has been held in administrative segregation for 72 hours, and agency review of such cases to determine whether the placement is only as a last resort and when no other viable housing options exist. Where a detainee victim has been held in administrative segregation for longer than five days, the agency must also review whether the placement is justified by extraordinary circumstances, or is at the detainee's own request. DHS does not believe that further definition of the term ''unusual circumstances'' is necessary based on any concern that detainees' lack of awareness of their rights will lead them to request prolonged protective custody. In ICE's experience, detainees are not likely to affirmatively request continued protective custody unless they desire to remain segregated. This final rule includes strong provisions on detainee education in this context.

*Comment.* One commenter stated that protective custody should only be used as a last resort.

*Response.* Section 115.68 has been revised to require the FOD to determine whether the placement in segregation is used only as a last resort and when no other viable housing options exist.

*Comment.* One commenter recommended that paragraph (c) have a defined timeline for reassessments.

*Response.* Paragraph (b) of this standard imposes a 5-day limitation on the continuous segregation of detainee victims in protective custody, inclusive of any time necessary to complete a re-assessment. The final rule also requires facilities to notify the ICE FOD whenever a detainee victim has been held in administrative segregation for 72 hours.

*Comment.* Multiple commenters suggested that, for alleged victims who have been placed in post-allegation protective custody, DHS should incorporate a strong presumption of full release from custody, potentially under programs that provide alternatives to detention.

*Response.* Under the regulation, the facility shall place detainee victims of sexual abuse in a supportive environment that is the least restrictive housing option possible. A detainee who is in post-allegation protective custody shall not be returned to the general population until completion of a proper re-assessment, taking into consideration any increased vulnerability of the detainee as a result of the sexual abuse. In light of the strong protections required under this standard, and because alternatives to detention programs continue to be available under the regulation, DHS declines to incorporate a presumption in favor of release. In addition to the detainee's personal vulnerability, DHS will continue to make release decisions based upon other generally applicable factors, including, *inter alia,* individual security considerations, applicable statutory detention mandates, and available custodial options in each case.

**Criminal and Administrative Investigations (§§ 115.71, 115.171)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required investigations by the agency or the facility with the responsibility for investigating the allegation(s) of sexual abuse be prompt, thorough, objective, and conducted by specially trained, qualified investigators. The proposed standard also required agencies and facilities to conduct an administrative investigation of (1) any substantiated allegation and (2) any unsubstantiated allegation that, upon review, the agency deems appropriate for further administrative investigation.

*Changes in Final Rule*

DHS made minor revisions to the Subpart B provision, to clarify that responsibility for conducting criminal and administrative investigations or referring allegations to the appropriate investigative authorities ultimately lies with the agency, and not the facility. Otherwise, DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* Commenters suggested that all allegations of sexual abuse be

investigated, including third party and anonymous reports. There was a recommendation that DHS cross-reference this standard with § 115.34 with regard to the requisite qualifications of the investigator.

*Response.* Section 115.22 requires that all allegations of sexual abuse be investigated. The purpose of § 115.71(a) is to clarify investigative responsibility (e.g., the division of responsibility between the agency/facility/state/local law enforcement) and to require that investigators be properly trained and qualified. Allegations may be made directly by a detainee or by a third party such as an attorney, a family member, another detainee, a staff member, or an anonymous party. The source of the allegation does not affect the requirement that all allegations of sexual abuse be investigated. DHS clarifies here that specialized training for investigators is addressed in § 115.34.

*Comment.* There were several advocacy groups that suggested that prosecutorial discretion be exercised with regard to victims and witnesses of sexual abuse and assault, especially young survivors of sexual abuse and assault. Other commenters suggested that victims be given the option of release on their own recognizance during the investigation process with the understanding that they would remain in the United States lawfully. A similar suggestion was made by another commenter in that victims should be given the ability to be released on their own recognizance, on bond, or through an alternative detention program and the ability to stay in the United States while the investigation is carried out.

*Response.* Tools for prosecutorial discretion already are available for victims of sexual abuse and assault.[15] Deferred action refers to the decision-making authority of ICE, among other entities, to allocate resources in the best possible manner to focus on high priority cases, potentially deferring action on cases with a lower priority. Deferred action can be used by ICE for any alien victim, including a victim in detention, due to the victim's status as an important witness in an ongoing investigation or prosecution.

Administrative Stay of Removal (ASR) is another discretionary tool that permits ICE to temporarily delay the removal of an alien. Any alien, or law enforcement agency on behalf of an alien, who is the subject of a final order of removal may request ASR from ICE. An ASR may be granted after the completion of removal proceedings up to the moment of physical removal.

Longer term immigration relief may be available, including in the form of U nonimmigrant status. U nonimmigrant status protects victims of qualifying crimes (including sexual assault and felonious assault) who have suffered substantial mental or physical abuse as a result of the crime and are willing to assist law enforcement authorities in the investigation or prosecution of the criminal activity. U nonimmigrant status is self-petitioning and requires a law enforcement certification.

DHS also routinely considers whether detainees may be suitable candidates for release on their own recognizance or on bond, or participation in an alternative to detention program.

**Evidentiary Standard for Administrative Investigations (§§ 115.72, 115.172)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that agencies not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Reporting to Detainees (§ 115.73)**

*Summary of Proposed Rule*

The standard found in § 115.73 in the proposed rule required the agency to notify the detainee of the result of the investigation when the detainee is still in immigration detention, as well as where otherwise feasible.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One advocacy group suggested that holding facilities have a comparable provision with what is currently proposed for immigration detention facilities. They further suggested that there be an attempt for DHS to forward the outcome of the investigation to the detainee, especially when the detainee is still in detention due to their belief that if there is a lack of incident follow-up there will be a lack of accountability within the holding facility.

*Response.* DHS notes that DOJ did not apply its standards regarding reporting to inmates in the context of lockups, due to the short-term nature of lockup detention. Similarly, due to the short-term nature of detention in holding facilities, DHS declines to accept the suggestion to include a provision on detainee notification of investigative outcomes for allegations made in holding facilities.

*Comment.* Some commenters suggested that DHS's proposed standard should follow the DOJ standard. The DOJ standard describes what type of notification will be delivered to the inmate concerning their abuser and the investigation, that such notifications will be documented, and that notifications will no longer be required when the inmate/victim is released from custody. A commenter wrote that failure to provide updates on the agency's response to an allegation of sexual abuse increases the survivor's anxiety about future abuse and decreases the survivor's belief that his or her report is being taken seriously.

*Response.* DHS does not believe it is necessary to adopt the DOJ standard on notifications. ICE already has the responsibility to inform detainees of the outcome of any investigation as well as any responsive action taken. In instances in which the detainee has been moved to another facility, coordination between facilities is required, in part to ensure that the investigative outcome can be shared with the detainee.

With regard to notifying the detainee of actions taken against an employee, DHS agrees that agency follow-up can be of great importance to victims, and therefore requires the agency to notify the detainee as to the result of the investigation and any responsive action taken. In the immigration detention facility context, DHS has also undertaken to perform this follow-up whenever feasible, even after the detainee has been released from custody. As DHS noted in its proposal, DHS believes that its approach strikes the proper balance between staff members' privacy and the detainee's right to know the outcome of the investigation.

In light of the breadth of the DHS provision, DHS notes that in its experience, state privacy laws and union guidelines may prohibit sharing certain information about disciplinary actions taken against employees. Releasing details about an employee's punishment could be in violation of these privacy laws or policies. DHS cannot require that specific information about sanctions taken against an

[15] *See generally id.*

employee be included in post-investigation follow-up with the detainee. However, consistent with the regulatory text, where the information is available to the agency and can be provided in accordance with law, it will be provided.

**Disciplinary Sanctions for Staff (§§ 115.76, 115.176)**

*Summary of Proposed Rule*

The standards contained in the proposed rule provided that staff shall be subject to disciplinary actions up to and including termination for violating agency sexual abuse policies, and that termination shall be the presumptive disciplinary sanction for staff that engaged in or threatened to engage in sexual abuse, as defined in the regulation. The proposed standards further provided that if a staff member is terminated for violating such policies, or if a staff member resigns in lieu of termination, a report must be made to law enforcement agencies (unless the activity was not criminal) and to any relevant licensing bodies, to the extent known.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One commenter suggested that repeat offenders should be subjected to criminal and civil sanctions, and facilities that have recurrences of sexual abuse and assault claims (paying specific attention to juvenile facilities) should be penalized and closely monitored. Another commenter suggested that if multiple substantiated cases of sexual abuse have been found in a facility, the facility should be closed or lose its contract with DHS.

*Response.* DHS declines to make the requested revision to the standard. DHS does not have criminal prosecution authority. Furthermore, the PREA statute itself does not provide for civil penalties, as suggested by the comment. DHS takes extremely seriously any allegations or substantiated incidents of sexual abuse. All facilities will be closely monitored for how they respond to sexual abuse and assault reports; address safety, medical, and victim services issues; and coordinate criminal and administrative investigative efforts. While monitoring is recognized as a crucial element, DHS does not concur with the suggestion that facilities with recurring allegations or a higher number of allegations should always be penalized, as the subsequent investigation may or may not substantiate an allegation. In addition, detainee population size must be taken into account when assessing the number of allegations at a given facility over a period of time. However, when investigations or audits reveal a policy, procedural, or systemic issue at the facility that has contributed to sexual abuse or assault, DHS will use its authority to ensure that corrective actions are promptly taken. DHS emphasizes the importance of working with the facility to take corrective and preventive action as the appropriate response.

DHS recognizes that detainees who are minors have special vulnerabilities. With the exception of juveniles in the Family Residential Program, and rare cases where minors with criminal records are held in juvenile detention facilities, most juveniles are in the care and custody of HHS/ORR, other than the brief period of time that such unaccompanied juveniles are in ICE custody prior to transfer to ORR. The monitoring of those facilities is within the purview of HHS and outside the scope of DHS authority.

*Comment.* One commenter recommended that any person(s) regardless of whether they are staff, contractors, or volunteers, and regardless of whether they work in a DHS facility or contract facility, should be removed from their position at a detention facility for violating agency sexual abuse or sexual harassment policies.

*Response.* DHS agrees that violation of agency sexual abuse and assault policies merits discipline of employees and contractors, up to and including removal. However, DHS does not have authority to require contract facilities to remove employees from employment entirely, but only to require reassignment to a position where there will not be contact with detainees. As such, the comment cannot be implemented as recommended.

**Corrective Action for Contractors and Volunteers (§§ 115.77, 115.177)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required that any contractor or volunteer who has engaged in sexual abuse be prohibited from contact with detainees. The proposed rule further required that reasonable efforts be made to report to any licensing body, to the extent known, incidents of substantiated sexual abuse by a contractor or volunteer.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One commenter suggested that entities that have repeat offenses be subject to both criminal and civil sanctions by the agency. The commenter further suggested that contracted parties be subject to the same standards as non-contracted parties and should have further repercussions for their actions other than employee dismissal. The commenter suggested that a facility found to have repeat incidents should be subject to harsher penalties and be monitored more closely.

*Response.* Similar to the response regarding §§ 115.76 and 115.176, DHS believes that a change is not warranted or appropriate to prescribe both criminal and civil sanctions. DHS does not have criminal prosecution authority and the PREA statute similarly does not provide for civil penalties. Nevertheless, DHS takes extremely seriously any allegations or substantiated incidents of sexual abuse.

Contract employees are subject to the same standards as agency employees and investigations into allegations made against contractors are no less thorough than those made against agency employees. All facilities will be closely monitored for how they respond to sexual abuse and assault reports; address safety, medical, and victim services issues; and coordinate criminal and administrative investigative efforts. DHS believes that the best approach to remedy a situation of recurring sexual abuse and assault claims varies with the circumstances, and may include disciplining or removing individual employees involved in the abuse, working with the facility to take corrective and preventive action, regular facility monitoring, as well as terminating a contract with a facility in its entirety.

*Comment.* One commenter recommended that any person(s) violating agency sexual abuse or sexual harassment policies be removed from their position at the detention facility regardless of whether the employee is staff, a contractor, or a volunteer and regardless of whether the person works in a DHS facility or contract facility.

*Response.* As discussed above in response to the comment received on §§ 115.76 and 115.176, DHS agrees that violation of agency sexual abuse and assault policies merits discipline of employees and contractors, up to and including removal. However, DHS does not have authority to require contract

facilities to remove employees from employment entirely, but only to require reassignment to a position where there will not be contact with detainees. Accordingly, the comment cannot be implemented as recommended.

**Disciplinary Sanctions for Detainees (§ 115.78)**

*Summary of Proposed Rule*

The standard contained in the proposed rule mandated that detainees be subject to disciplinary sanctions after they have been found to have engaged in sexual abuse. The standard mandates that discipline be commensurate with the severity of the committed prohibited act and pursuant to a formal process that considers the detainee's mental disabilities or mental illness, if any, when subjecting the detainee to disciplinary actions.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* One commenter suggested that paragraph (a) specify that detainees will only face disciplinary action for detainee-on-detainee sexual abuse because the language in paragraph (e). Paragraph (e) prohibits the facility from disciplining a detainee for sexual contact with staff unless there is a finding that the staff member did not consent to such contact.

*Response.* DHS declines to make the proposed change to paragraph (a) because this modification would preclude DHS from disciplining a detainee found to have engaged in sexual contact with a non-consenting staff member (pursuant to paragraph (e) of this standard). DHS believes it is important to retain the authority to discipline a detainee for engaging in sexual abuse of a staff member.

*Comment.* One commenter suggested that two provisions from the DOJ PREA standard be adopted by DHS. One provision in the DOJ rule allows for the facility to require the abuser to participate in mental health interventions as a condition of access to programming or other benefits. The other provision in the DOJ rule allows for an agency to prohibit, in its discretion, all sexual activity between inmates and if such activity occurs, the agency may discipline the inmates for this activity. It further specifies that the agency is not able to deem such activity to be sexual abuse if it determines that the activity is not coerced.

*Response.* DHS declines to accept either of the proposed changes from this comment. Whereas the purpose of incarceration by DOJ includes punishment and rehabilitation—thus making therapy and counseling more widely appropriate—the purpose of immigration detention is to facilitate appearance at immigration proceedings and removal. Accordingly, mandating therapy or counseling as a condition of access to programming or other benefits would not be appropriate in this context.

DHS notes, however, that § 115.83 of the regulation includes provisions for voluntary access to ongoing medical and mental health care for sexual abuse victims and abusers, when deemed appropriate by mental health practitioners. With regard to the second proposal, DHS also rejects the recommendation to prohibit a finding of sexual abuse when there is no element of coercion in sexual activity between detainees. This clarification is unnecessary as the standards define detainee-on-detainee sexual abuse to exclude incidents of consensual sexual conduct between detainees. A provision explicitly authorizing the agency to prohibit all sexual activity between detainees (including consensual sexual activity) is similarly unnecessary, as ICE's detention standards already contain such a prohibition.

*Comments.* A few advocacy groups suggested specifying in paragraph (b) that the circumstances of the prohibited act, the detainee's disciplinary history, and the sanctions imposed for comparable offenses by other detainees with similar histories should be taken into consideration when determining the appropriate disciplinary action. These advocacy groups stated that it is important that the sanctions against detainees be appropriate and fair for the offense. One commenter stated that adding this additional language will help prevent the misuse of the regulations to inappropriately punish LGBTI detainees.

*Response.* DHS concurs with the commenters that disciplinary sanctions must be fair and appropriate. With this very objective in mind, the regulation provides that each facility holding detainees in custody shall have a detainee disciplinary system with progressive levels of reviews, appeals, procedures, and documentation procedure, which imposes sanctions in an objective manner commensurate with the severity of the disciplinary infraction. In addition, the regulation requires the disciplinary process to consider whether a detainee's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed on the detainee. DHS believes that these protections are sufficient to ensure that disciplinary sanctions are fair and appropriate, and therefore DHS does not adopt the changes requested by the commenters on this point.

*Comments.* An advocacy group suggested that there be a new § 115.178 in Subpart B applicable to holding facilities. This recommended standard would include a provision in which when there is probable cause that a detainee has sexually abused another detainee, the issue shall be referred from the agency to the proper prosecuting authority. This provision would further require the agency to inform any third-party investigating entity of this policy. The advocacy group believed that it was an oversight that DHS did not include this section in Subpart B of the proposed rule.

*Response.* DHS appreciates the comment recommending addition of a new § 115.178 applicable to holding facilities only. However, DHS declines to make this change because DHS does not discipline detainees in holding facilities. Sections 115.21 and 115.121 set forth requirements to ensure each agency and facility establishes a protocol for the investigation of allegations of sexual abuse, or the referral of allegations of sexual abuse to the appropriate investigative authorities. In general, the appropriate investigative authority is responsible for making referrals for prosecution. Accordingly, DHS declines to add a new § 115.178 as suggested.

**Medical and Mental Health Assessments; History of Sexual Abuse (§ 115.81)**

*Summary of Proposed Rule*

The standard contained in the proposed rule required that pursuant to the assessment for risk of victimization and abusiveness in § 115.41, facility staff will ensure immediate referral to a qualified medical or mental health practitioner, as appropriate, for detainees found to have experienced prior sexual victimization or perpetrated sexual abuse. For medical referrals, the medical professional was required to provide a follow-up health evaluation within two working days from the date of the initial assessment. For mental health referrals, the mental health professional was required to provide a follow-up mental health evaluation within 72 hours from the date of the referral.

*Changes in Final Rule*

The final rule includes minor changes to paragraph (a). The phrase ''subject to

the circumstances surrounding the indication'' was removed and the term ''as appropriate'' was moved within the paragraph.

*Comments and Responses*

*Comment.* One commenter suggested that there should be specific provisions within the standard concerning the follow-up mental health services after the initial evaluation.

*Response.* Section 115.81 requires that detainees who have experienced prior sexual victimization or perpetrated sexual abuse receive referrals for follow-up medical and/or mental health care as appropriate. In addition, ICE's detention standards provide comprehensive requirements for the mental health care of all detainees, including follow-up mental health evaluations as appropriate, and referral to external specialized providers as necessary. Because ICE detention standards outline these requirements, adding a provision specifically targeted to sexual abuse and assault victims is not necessary.

*Comment.* A human rights group suggested that paragraph (a) be written more clearly and specifically about what the circumstances might be concerning when a staff member would make a referral for a detainee to seek a follow-up with a medical or mental health practitioner. The commenter suggested that if DHS does not choose to clarify this language, DHS should remove the language altogether.

*Response.* DHS agrees with the comment. Upon consideration, DHS decided to strike the phrase ''subject to the circumstances surrounding the indication'' from § 115.81(a).

*Comment.* Multiple commenters suggested adding the confidentiality provision that is currently in the DOJ PREA rule. The statement would ensure that the information relating to a sexual abuse or assault incident will remain limited to medical and mental health practitioners and other staff, as necessary. Access to information would be as necessary to inform treatment plans and security and management decisions, such as housing, bed placement, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

*Response.* Section 115.61 of the standards requires that information related to a sexual abuse incident be limited to those needed to protect the safety of the victim, provide medical treatment, investigate the incident, or make other pertinent security and management decisions. DHS believes that this provision adequately addresses the concern expressed by these commenters.

*Comment.* An advocacy group recommended adding a statement that is in the DOJ final rule concerning detainee consent. The DOJ rule states that if a detainee confirms prior sexual victimization, unless the detainee is less than 18 years of age, the medical and mental health practitioners must obtain consent from the detainee before reporting the information.

*Response.* Again, § 115.61 of the standards requires that information related to a sexual abuse incident be limited to the information needed to protect the safety of the victim, provide medical treatment, investigate the incident, or make other pertinent security and management decisions. DHS believes that this provision adequately addresses the concern expressed by these commenters.

*Comment.* A commenter suggested that a provision be added for women and girls to be screened, assessed, and provided with treatment during confinement. The commenter urged for this provision to be mandated for minors.

*Response.* The proposed and final rules clearly require that female detainees and minors be afforded each of the protections outlined by the standards, including with regard to screening, assessment, and treatment.

**Access to Emergency Medical and Mental Health Services (§§ 115.82, 115.182)**

*Summary of Proposed Rule*

The standards in the proposed rule required detainee victims of sexual abuse to have timely, unimpeded access to emergency medical treatment at no financial cost to them.

*Changes in Final Rule*

DHS made a minor change to the final rule by deleting the phrase ''where appropriate under medical or mental health professional standards'' in § 115.82(a) because the phrase was superfluous. DHS revised § 115.182 to clarify that for holding facilities as well as immigration detention facilities, emergency medical treatment and crisis intervention services will be provided in accordance with professionally accepted standards of care. The relevant portion of § 115.182 now mirrors the language in § 115.82. DHS also deleted the phrases ''in immigration detention facilities'' and ''in holding facilities'' from § 115.82(a) and § 115.182(a) respectively, to clarify the scope of the provision.

*Comments and Responses*

*Comment.* Multiple commenters suggested that DHS include in § 115.182 specific provisions concerning the types of treatment available to detainees from emergency medical providers. Under § 115.82, these treatments include emergency contraception and sexually transmitted infections prophylaxis, which are particularly time-sensitive. One of the legal associations further suggested that § 115.182 also contain a provision that would allow for referrals for follow-up services and continued care by the agency or facility for detainees to continue treatment upon transfer to another facility or release from custody.

*Response.* DHS has considered the comments, and has revised § 115.182 to mirror § 115.82 by adding that detainee victims of sexual abuse in holding facilities shall have timely access not only to emergency medical treatment, but also to crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis in accordance with professionally accepted standards of care. DHS disagrees that detainee victims in holding facilities should receive referrals for follow-up care because the short-term nature of the detention makes this impracticable.

*Comment.* Multiple commenters suggested that this section be modified to ensure that victimized detainees receive expedited access to emergency contraception. This access should be provided as quickly as possible after the incident. The commenters believe this is an appropriate provision to include because emergency contraception can prevent pregnancy within five days of intercourse but it is more effective if it is taken within three days.

*Response.* The final rule clearly states that victims of sexual abuse ''shall have timely unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception . . . in accordance with professionally accepted standards of care.'' The medical professionals who provide care to detainees are in the best position to administer emergency contraception. Mandating a specific timeline is not appropriate for this regulation. DHS believes that the final rule, as written, will ensure that victims have timely access to emergency contraception.

*Comment.* Multiple commenters expressed concern about the lack of correct information and education about transmission of sexually transmitted diseases and infections. Commenters suggested expanding relevant provisions in this section to explicitly refer to all forms of sexual abuse. The language proposed would specifically include victims of oral, anal, or vaginal sexual

abuse due to non-consensual oral, anal, and vaginal touching or penetration. One of these commenters also suggested the removal of the phrase ''where appropriate under medical or mental health professional standards,'' written in paragraph (a) of this section.

*Response.* The final rule contains a thorough definition of sexual abuse and assault in § 115.6, which includes the specific areas of abuse as noted by the commenters. DHS declines to add to the definition of sexual abuse in this provision because it would be redundant and could potentially conflict with the final rule's definition of sexual abuse and assault.

After considering the comments to § 115.82(a), DHS decided not to include the phrase ''where appropriate under medical or mental health standards'' in the final rule.

**Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers (§ 115.83)**

*Summary of Proposed Rule*

The standard in the proposed rule required that victims of sexual abuse in detention receive access to ongoing medical and mental health care as necessary without financial cost to the victim. The standard also requires that this care be consistent with the community level of care for as long as such care is needed.

*Changes in Final Rule*

DHS made one minor change to the final rule by replacing the word ''incarcerated'' with ''detained'' in § 115.83(d).

*Comments and Responses*

*Comments.* A commenter had concerns about the medical and mental health care being age appropriate for all detainees, specifically citing children and adolescents. The commenter suggested adding the phrase ''age appropriate'' when referring to the medical and mental health evaluations and treatments discussed in paragraph (a).

*Response.* DHS recognizes the importance of detainees received ''age appropriate'' care. However, because medical personnel are expected and obligated to provide age appropriate care as a duty under the medical standard of care, adding this language would be superfluous.

*Comment.* A commenter expressed concern about victims of various forms of sexual abuse, which includes oral, anal, and vaginal abuse, receiving access to ongoing medical and mental health care services due to the misinformation about the different ways sexually transmitted diseases can be spread. Therefore, the commenter suggests revising the language to specify the different types of sexual abuse that detainees may encounter.

*Response.* Sexual abuse and assault is thoroughly defined in § 115.6. The specific types of abuse set forth in the Definitions section apply to the final rule in its entirety.

*Comment.* A commenter suggested guaranteeing the confidentiality of medical and mental health records because confidential trauma counseling and medical and mental health care are essential to recovery.

*Response.* Maintaining the confidentiality of medical records is a DHS priority for every detainee. As such, ICE's detention standards contain explicit requirements for ensuring this confidentiality in all circumstances. Given the overarching confidentiality concern, DHS does not believe that revising this section provides greater protection to detainees than that which is already contained in the proposed and final rules.

*Comment.* Commenters suggested the provision be edited to explicitly state the full range of services and information that should be made available to victims of sexual abuse. One commenter suggested that DHS align the final rule's provision on pregnancy-related services with PBNDS. The commenter noted that under ICE PBNDS provide that when a detainee decides to terminate her pregnancy, ICE must arrange for transportation at no cost to the detainee. The commenter also noted that ICE PBNDS provide that ICE will assume all costs associated with the detainee's abortion when the pregnancy results from rape or incest or when continuing the pregnancy will endanger the life of the woman. The commenter recommended that DHS include those provisions in paragraph (d) to build upon best practices and have consistent regulatory and sub-regulatory guidance.

*Response.* DHS agrees that women who become pregnant after being sexually abused in detention must receive comprehensive information about and meaningful access to all lawful pregnancy-related medical services at no financial cost. The final standard includes language that requires victims to receive timely and comprehensive information about all lawful pregnancy-related medical services, and that access to pregnancy-related medical services must be timely. Also, facilities are required to provide information about and access to ''all lawful'' pregnancy-related medical services. These requirements include by implication the additional 2011 PBNDS provisions referenced above.

*Comment.* Commenters also suggested that DHS clarify that detention facilities must provide detainees medically accurate and unbiased information about pregnancy-related services, including abortion. The commenter stated that this is particularly relevant where the detention facility uses religiously affiliated institutions to provide care to inmates. The commenter stated that a woman should always be able to have accurate information about all of her options; information should never be provided with the intent to coerce, shame, or judge.

*Response.* DHS clarifies that the standard requires that covered detainee victims receive medically accurate and unbiased information, including information about abortion. This is part of the requirement that facilities provide ''comprehensive'' information about all lawful pregnancy-related medical services.

*Comment.* Commenters also suggested adding language clarifying that transportation services would be given to victims needing medical services when the detention facility is unable to provide such services in a timely manner.

*Response.* Additional guidance on transportation is unnecessary given the requirement that victims be provided ''timely access'' to all lawful pregnancy-related medical services—which, when necessary, includes transportation.

*Comment.* Commenters suggested that DHS remove the phrase ''vaginal penetration'' in paragraph (d) because pregnancy can occur without penetration.

*Response.* DHS does not believe that § 115.83(d) should be revised to include a broader definition of penetration. Paragraph (d) applies to a limited set of circumstances in which a female victim becomes pregnant after sexual abuse. Some sort of penetration pursuant to the definition in § 115.6 must occur in order for the victim to become pregnant. The phrase ''vaginal penetration'' provides a clear guideline to the agency or facility about when it is appropriate to administer pregnancy tests.

*Comment.* Commenters suggested that DHS remove the phrase ''by a male abuser'' because detainees could also be abused by females. The commenters expressed concern that if the language is retained, the victims of female abusers will not receive critical health care services.

*Response.* DHS declines to make the suggested revision, because the phrase ''by a male abuser'' in § 115.83(d) relates to the possibility of pregnancy, and in

no way mitigates a female victim's right to care if the abuser is female. The remaining provisions in § 115.83 apply to all incidents of detainee sexual abuse and are not limited by gender.

*Comment.* A commenter suggested that full confidential rape counseling or mental health care be provided to a sexual abuse victim. Another commenter suggested that the language be improved to include unmonitored telephone calls from detainee victims to non-governmental organizations or rape crisis organizations as opposed to the OIG or other offices affiliated with ICE or DHS. This commenter also stated that detainees do not always have phone access to call the JIC because some facilities may have the number blocked on their telephone system.

*Response.* While DHS appreciates the commenters' concern about the benefits of confidential rape counseling, mental health care, and unmonitored phone calls to lodge complaints or seek help, DHS believes that provisions relating to access to outside confidential support services set forth in § 115.53 are adequate to address these concerns.

*Comment.* Multiple commenters suggested that DHS clarify the regulations to include treatment for sexually transmitted infections, including HIV-related post-exposure prophylaxis for victims of sexual abuse. Commenters observed that paragraph (e) calls for access to testing, but not treatment. Commenters expressed concern that without treatment, sexually transmitted infections can lead to more serious and possibly permanent complications. They suggested that the regulation state explicitly that victims will receive ongoing regular treatment.

*Response.* DHS recognizes the importance of providing testing for sexually transmitted infections, and included paragraph (e) in the proposed rule which requires facilities to offer such tests, as medically appropriate to victims of sexual abuse while detained. DHS clarifies that paragraph (a) requires that all detainees who have been victimized by sexual abuse have access to treatment. Paragraph (b) requires that the evaluation and treatment include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in another facility or release from custody. DHS trusts that medical practitioners administering such tests will adhere to professionally accepted standards for pre- and post-test counseling and treatment.

**Sexual Abuse Incident Reviews (§§ 115.86, 115.186)**

*Summary of Proposed Rule*

The standards in the proposed rule set forth requirements for sexual abuse incident reviews, including when reviews should take place and who should participate. The standards also required the facility to forward all reports and responses to the agency PSA Coordinator. The proposed rule further required an annual review of all sexual abuse investigations, in order to assess and improve sexual abuse intervention, prevention, and response efforts.

*Changes in Final Rule*

Section 115.86(a) now includes a requirement that facilities must conclude incident reviews within 30 days of the completion of the investigation. Section 115.186(a) now includes a requirement that the agency review shall ordinarily occur within 30 days of the agency receiving the investigation results from the investigative authority. The slightly different formulation for Subpart B reflects the fact that frequently the agency that oversees a holding facility is not the investigative authority.

Section 115.86(b) now requires facility incident review teams to (1) consider whether the incident or allegation was motivated by race, ethnicity, gender identity, or lesbian, gay, bisexual, transgender, or intersex identification status (or perceived status); and (2) consider whether the incident or allegation was motivated by gang affiliation or other group affiliation.

Section 115.86(c) now requires facility incident review teams to prepare a report of their findings and any recommendations for improvement and submit such report to the facility administrator, the FOD or his or her designee, and the agency PSA Coordinator. If no allegations were made at a facility during the annual reporting period, a negative report is required.

*Comments and Responses*

*Comment.* One comment suggested that DHS track whether the victims are LGBTIGNC. A commenter suggested that this would be a way to track whether the regulations are effective.

*Response.* DHS does not fully concur with the commenter's suggestion to track LGBTIGNC status in the incident review context. Many detainees choose to not disclose to staff or others in the detention setting that they identify as lesbian, gay, bisexual, transgender, or intersex. In the event that a detainee does not affirmatively disclose this information in the context of making a report or otherwise, DHS believes it might be inappropriate to require staff to question the detainee about his or her sexual orientation and gender identity for these purposes. DHS believes that this could constitute a breach of detainees' privacy, especially detainees who prefer to not share this information openly.

DHS agrees, however, that LGBTIGNC status can contribute to vulnerability. DHS is therefore revising the Subpart A standard to require facilities to take into account whether the incident or allegation was motivated by race, ethnicity, gender identity, or lesbian, gay, bisexual, transgender, or intersex identification status (or perceived status); or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility. In practice, this requires the facility to affirmatively consider the possibility that these factors motivated the incident or allegation, and to record this information if known. It does not, however, require facilities to affirmatively inquire as to the victim's sexual orientation and gender identity. DHS also is adding a requirement to §§ 115.87(d)(2) and 115.187(b)(2) that the agency PSA Coordinator must aggregate information regarding whether the victim or perpetrator has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.

*Comment.* Multiple commenters suggested matching DHS's proposed §§ 115.86 and 115.186 to DOJ's corresponding sections in their PREA rule. The relevant provisions of DOJ's rule include the following:

1. The review must be concluded within 30 days of the conclusion of the investigation.
2. The review team must include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
3. The review team must consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
4. The review team must examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
5. The review team must assess the adequacy of staffing levels in that area during different shifts.

6. The review team must assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

7. The review team must submit its report to both *the facility head* and the agency PREA compliance manager.

The commenters stated that the additional language would better protect detainees and encourage the overall goal of eliminating sexual abuse in facilities by helping facilities identify and fill gaps in current policies and procedures.

*Response.* DHS has considered each of these recommendations carefully, and has revised its proposal to incorporate provisions implementing items 1 and 3, as noted above. DHS understands the importance of reviewing reported incidents to better protect detainees and help facilities identify and fill gaps in current policies and procedures. To achieve this, §§ 115.87 and 115.187 require the collection of all case records associated with claims of sexual abuse, including incident reports. The data collected is required to be shared with the PSA Compliance Manager and DHS entities, including ICE leadership and, upon request, CRCL.

Under § 115.88, after this data is reviewed by agency leadership, the agency will issue a report that will identify problem areas and patterns to be improved upon, potentially including items 4–6 in the list above. In short, DHS believes that the final regulation sufficiently accounts for the considerations raised by the commenters.

*Comment.* One commenter suggested that DHS require that the PSA Compliance Manager be an upper-level facility official.

*Response.* DHS rejects the suggestion to require that the PSA Compliance Manager be an upper-level facility official, as facilities should have some discretion about whom they choose for this role. Smaller facilities may not always have an upper-level official available to fulfill the role of PSA Compliance Manager.

*Comment.* Commenters suggested that DHS require that all incident reviews be conducted by a team of upper-level management officials.

*Response.* DHS does not concur with the suggestion to require that all incident reviews be conducted by a team of upper-level officials as smaller facilities may not have the staffing resources and may elect to have an individual, the PSA Compliance Manager, conduct the review.

*Comment.* One commenter suggested that a paragraph be added stating that if a facility's annual review finds that there has been no report of sexual abuse or assault then the report should reflect that information. Another commenter suggested that each facility's annual reviews be available to the public on their Web site as well as the agency's Web site.

*Response.* DHS agrees with the suggestion to require that facilities that do not have any sexual abuse or assault allegations in the reporting period still be required to submit a negative report. Facilities are required to provide results and findings of the annual review to the agency PSA coordinator. The PSA coordinator will use these reviews to develop the agency's annual report, which will be made available to the public through the agency's Web site. DHS does not believe, however, it is appropriate or necessary to mandate individual facilities post the annual review on their Web site, as the reviews can be accessed more easily through the single portal of the agency Web site.

*Comment.* A commenter suggested that DHS require all immigration detention facilities to comply with this standard immediately.

*Response.* DHS does not concur with the suggestion to add a different implementation timeline for incident reviews than the rest of the standards.

**Data Collection (§§ 115.87, 115.187)**

*Summary of Proposed Rule*

The standards contained in the proposed rule required the facility (in Subpart A) or agency (in Subpart B) to maintain case records associated with claims of sexual abuse. The standards required the agency to aggregate the incident-based data at least annually. The standards further mandated that upon request the agency would be required to provide all such data from the previous calendar year to CRCL.

*Changes in Final Rule*

Sections 115.87(a) and 115.187(a) now include a requirement that facilities keep data collected on sexual abuse and assault incidents in a secure location. Sections 115.87(d)(2) and 115.187(b)(2) have been revised to also require the PSA Coordinator to aggregate information about whether the victim or perpetrator has self-identified as LGBTIGNC. The requirement under Subpart B for the agency to provide all data collected under § 115.187 to the PSA Coordinator was removed in order to ensure that the requirements in both subparts were consistent. Such a requirement is not necessary and was not originally included under Subpart A because the PSA Coordinator has been designated as the agency point of contact to aggregate relevant data pursuant to this regulation.

*Comments and Responses*

*Comment.* One commenter suggested that the data collected be kept in a secure area to which unauthorized individuals would not have access.

*Response.* DHS concurs with this concern and accepts the change suggested by the commenter.

*Comment.* One commenter suggested that paragraph (a) take effect immediately and require all facilities to begin acquiring and maintaining the necessary data.

*Response.* Currently facilities report all allegations through the agency Field Office, which is responsible for issuing a Significant Incident Report. The PSA Coordinator has access to all Significant Incident Reports as well as the electronic investigative case files of ICE's OPR. Therefore, it is not necessary to make the provision applicable immediately as a process is already in place. In any case, DHS does not concur with the suggestion to add a different implementation timeline for data collection than the rest of the standards.

*Comment.* A few commenters suggested that data be collected, analyzed, and maintained for all facilities, including contract facilities.

*Response.* The standard applies to all facilities, including contract facilities. Therefore the requirements in these sections regarding data collection also apply to all facilities.

**Data Review for Corrective Action (§§ 115.88, 118.188)**

*Summary of Proposed Rule*

The standards contained in the proposed rule described how the collected data would be analyzed and reported. The standards mandated that agencies use the data to identify problem areas, take ongoing corrective action, and prepare an annual report for each facility as well as the agency as a whole, including a comparison with data from previous years. The standards mandated that this report be made public through the agency's Web site or other means to help promote agency accountability.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* An advocacy group suggested that data be reviewed from all facilities in which immigration detainees are confined.

*Response.* The standard, including data review, applies to all facilities.

*Comment.* An advocacy group suggested that the reports that are published on the public Web site be updated at least annually.

*Response.* Annual reports will include assessments and information about progress and corrective actions from prior years.

**Data Storage, Publication, and Destruction (§§ 115.89, 115.189)**

*Summary of Proposed Rule*

The standards in the proposed rule described how to store, publish, and retain data collected pursuant to §§ 115.87 and 115.187. The standard required that the agency make the aggregated data publicly available at least annually on its Web site and shall remove all personal identifiers.

*Changes in Final Rule*

The final rule adds a requirement in both subparts that the agency maintain sexual abuse data collected pursuant to the above-described standard on data collection (§§ 115.87 and 115.187) for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

*Comments and Responses*

*Comment.* Multiple commenters suggested that data be securely retained under agency record retention policies and procedures, including a requirement to retain the collected data for a minimum period of time, preferably 10 years as contained in the DOJ standard.

*Response.* DHS has considered this comment and concurs that data collected must be retained for an adequate length of time. Given the interests involved and the possibility for legal action based on an incident, a longer period—such as 10 years—would more appropriately account for such interests. DHS agrees with the commenters, and the final rule adds a paragraph requiring the agency to maintain the collected data for a minimum of 10 years after the date of initial collection, unless otherwise prohibited by law.

*Comment.* A commenter suggested that data from state and local public facilities in which immigration detainees are confined should also be made publicly available.

*Response.* The data retention requirement applies to all data collected by facilities covered by the standards or by the agency. All facilities are required to provide sexual abuse and assault data to the agency PSA coordinator. The PSA coordinator will use this data to develop the agency's annual report, which will be made available to the public through the agency's Web site.

*Comment.* One commenter suggested replacing the Subpart B provision with materially identical language, except that the commenter removed part of an internal cross-reference.

*Response.* DHS declines to incorporate this revision, in the interest of ensuring clarity and consistency purposes with the parallel provision in Subpart A.

**Audits of Standards (§§ 115.93, 115.193)**

*Summary of Proposed Rule*

The proposed rule mandated that audits under these sections shall be conducted pursuant to §§ 115.201 through 115.205 of Subpart C. In Subpart A, the standard required audits of each immigration detention facility at least once every three years. The proposed rule allowed for expedited audits if the agency has reason to believe that a particular facility is experiencing problems related to sexual abuse. The Subpart B standard required, within three years, an initial round of audits of each holding facility that houses detainees overnight. Following the initial audit, the Subpart B standard required follow-up audits every five years for low-risk facilities and every three years for facilities not identified as low risk. All audits were required to be coordinated by the agency with CRCL.

*Changes in Final Rule*

Section 115.93 previously required the agency to ensure that ''each of its immigration detention facilities'' is audited at least once during the initial three-year period. Due to confusion expressed by some commenters, DHS now requires the agency to ensure that ''each immigration detention facility'' is audited at least once during the initial three-year period. In the interest of clarity, DHS modified § 115.93(b) to allow the agency to ''require'' rather than ''request'' an expedited audit and allows the agency to provide resource referrals to facilities to assist with PREA-related issues. DHS also revised §§ 115.93 and 115.193 to allow CRCL to request expedited audits if it has reason to believe that such an audit is appropriate.

*Comments and Responses*

*Comment.* Some commenters, including advocacy groups, expressed concern regarding whether contract facilities would be subject to auditing. Commenters advised clarifying that audit standards in their entirety would be a requirement for all facilities, including facilities run by non-DHS private or public entities, and that they all be audited on the same timeframe. One advocacy group suggested adding clarifying language that describes auditing of ''each facility operated by the agency, or by a private organization on behalf of the agency.'' It was also recommended that the standards clarify the point at which the audit requirement is triggered based upon the standards, particularly with regard to contract facilities. Former NPREC Commissioners also recommended the standards clarify that it is prohibited to hold detainees in any custodial setting where external audits are not applicable.

*Response.* Under the standards as proposed and in final form, DHS must ensure that each covered immigration detention facility and holding facility, as defined in §§ 115.5, 115.12, and 115.112, undergoes an audit. DHS has revised § 115.93(a) as indicated above for clarity.

Regarding the timeframe for implementation of audits, both subparts include a clear standard that for covered facilities established prior to July 6, 2015, ICE and CBP coordinate audits within the timeframe specified. Additionally, under § 115.193, CBP will ensure holding facilities that hold detainees overnight and established after July 6, 2015 are audited within three years.

DHS clarifies that in the immigration detention facility context, a facility will not be audited until it has adopted the PREA standards. However, DHS notes that immigration detention facilities are subject to regular inspections under current contracts and detention standards regardless of whether they are considered a covered facility pursuant to this regulation or whether they have adopted the PREA standards. DHS, through ICE, is committed to endeavoring to ensure that SPCs, CDFs, and dedicated IGSAs adopt the standards set forth in this final rule within 18 months of the effective date. Additionally, DHS, through ICE, will make serious efforts to initiate the renegotiation process so the remaining covered facilities adopt the standards and become subject to auditing as quickly as operational and budgetary constraints will allow. As noted previously, ICE can remove detainees from facilities that do not uphold adopted sexual abuse and assault practices.

*Comment.* Commenters suggested that a paragraph be added to the Subpart A standard requiring CRCL to create a process by which a member of the public is able to recommend an

expedited audit of any facility if he or she believes that the facility may be experiencing sexual abuse problems. The collection of groups also recommended allowing the agency to order such an expedited audit of a DHS-run facility and to request the expedited audit of a contract facility for such problems. These groups believe that this modification to the section is necessary for clarification purposes.

*Response.* DHS has considered these comments, but does not believe that any benefit of standing up such a formal process justifies the potential resource and logistical difficulties involved, especially given the many ways in which the public can already raise such issues with DHS. Members of the public always have the ability to reach out to CRCL regarding any matter of interest or potentially problematic aspect with regard to DHS's programs and mission, through CRCL's complaint form or simply in writing. Additionally, as noted previously regarding immigration detention facilities, detainees themselves are able to report sexual abuse or assault problems in several ways, including by calling the JIC or the point of contact listed on the sexual abuse and assault posters. Detainees or members of the public may also call the JIC and the OIG or report incidents to CRCL. The Detainee Handbook and posters provide contact information to detainees and also note that detainee reports are confidential.

Regarding agency ability to request audits, § 115.93(b) was revised in order to clarify that the agency can require an expedited audit if the agency has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. Section 115.193 instructs the agency to prioritize audits based on whether a facility has previously failed to meet the standards.

*Comment.* Some commenters suggested that holding facilities have an audit cycle of three years as opposed to its proposed audit cycle of five years. Commenters wrote that five years is an inadequate period of time as compared to the DOJ standards. The former NPREC Commissioners wrote that in all of its research on the issue of prison rape, NPREC did not find that that size, physical structure or passing an audit eliminated the need for oversight of a facility or agency. NPREC wrote that many facilities that were classified as having ''low'' incidents of sexual abuse by the data collected by BJS were often facilities where there were leadership and culture issues, lack of reporting, lack of access to medical and mental health, and notoriously poor investigative structures.

*Response.* ICE has 149 holding facilities and CBP has 768 holding facilities, for a total of 917 holding facilities. In considering the appropriate audit cycle for holding facilities, DHS took into account the extremely high number of facilities, as well as the unique elements of holding facilities and the variances between holding facilities. For example, some holding facilities are used for detention on a handful of occasions per year, or less, and some holding facilities are in public view (for example, in the airport context). Requiring more frequent audits in those situations is neither operationally practical nor the most efficient use of resources.

With this in mind, DHS proposed that all holding facilities that house detainees overnight would be audited within three years of the final rule's effective date. Thereafter, holding facilities would be placed into two categories: (1) Facilities that an independent auditor has designated as low risk, based on its physical characteristics and passing its most recent audit; and (2) facilities that an independent auditor has not designated as low risk. Facilities that are not determined to be low risk will adhere to the three year audit cycle recommended by commenters. Facilities that are determined to be low risk will follow a five year audit cycle.

In making its proposal and considering the comments received, DHS carefully considered the appropriate allocation of resources to ensure an appropriate audit strategy that allocates the greatest portion of limited resources to areas that are potentially higher risk. DHS also took into account the variety of holding facilities. For example, not all holding facilities are consistently used; some may be used to house detainees overnight only a handful of times per year, and some may generally be used to house only one detainee at a time.

With respect to the concerns raised by the former Commissioners of NPREC, DHS agrees that size, physical structure, and past audit history should not eliminate the need for oversight of a facility or agency. Accordingly, DHS is requiring regular, independent, rigorous oversight of all immigration detention facilities and immigration holding facilities, regardless of each facility's size, physical structure, and past audit history. DHS also agrees with the former Commissioners that facilities with apparently ''low'' incidence of sexual abuse still require careful scrutiny, not least because of the possibility of under-reporting, poor investigative structures, and other factors cited by the former Commissioners. Upon consideration, however, DHS has determined that rather than leading to the conclusion that all facilities must be audited every three years, these factors lead to the conclusion that DHS ought to implement robust standards across the board.

Upon consideration, DHS believes its audit program is comprehensive, robust, and cost-efficient. DHS therefore maintains this program in the final rule.

**Additional Provisions in Agency Policies (§ 115.95, 115.195)**

*Summary of Proposed Rule*

The standards in the proposed rule provided that the regulations in both Subparts A and B establish minimum requirements for agencies and facilities. Additional requirements from the agencies and facilities may be included.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

**Scope of Audits (§ 115.201)**

*Summary of Proposed Rule*

The standard contained in the proposed rule mandated the coordination with CRCL on the conduct and contents of the audit as well as how the audits are to be conducted.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* A commenter suggested that an audit committee make appropriate recommendations to Congress, which the commenter believed would ensure PREA compliance.

*Response.* DHS has considered this comment but believes sufficient protections are in place under the auditing standards and other standards to reasonably ensure sexual abuse prevention is maximized. Recommendations from audits are best addressed by the agency and the facility in coordination. Furthermore, because DHS is accountable to Congress and the public, the agency will provide information about audits as required by Congressional and/or FOIA requests, as well as pursuant to the proactive disclosure requirement of 115.203(f).

*Comment.* A commenter recommended that facility audit

mechanisms currently in place incorporate questions and checklists relating to compliance with the PREA standards. Some examples of current mechanisms that the commenter provided were detention service monitors, external facility audits, and CRCL investigations.

*Response.* Due to implementation of these PREA standards, external auditing will be required for all covered confinement settings, to be carried out in the manner in which the auditing requirements are most effectively and functionally implemented. DHS declines to prescribe in regulations a specific form or process for this independent oversight.

*Comment.* A commenter suggested that ICE and contract employee ''whistleblowers'' should be protected, encouraged, and should have direct access to auditors.

*Response.* DHS agrees that reporting any information concerning a sexual abuse or assault incident occurring in a detention or holding facility is vital in the fight against sexual abuse and assault in DHS confinement facilities. This reporting includes whistleblowing on any corruption or wrongdoing in an agency or facility setting. DHS believes that this concern is addressed through the ICE Sexual Assault training and by the publication of this regulation in that both of these mechanisms will encourage whistleblowing by anyone with sexual abuse or assault incident information.

**Auditor Qualifications (§ 115.202)**

*Summary of Proposed Rule*

The standard in the proposed rule required an auditor to attain specific qualifications before being eligible for employment by the agency to perform the required audits.

*Changes in Final Rule*

DHS revised the auditor certification provision in paragraph (b), to make explicit agencies' responsibility to certify auditors in coordination with DHS. Otherwise, DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* A commenter recommended that the auditor be given authority to transfer an alleged victimized detainee during the investigation process.

*Response.* The ICE policy on Detainee Transfers, referred to previously as governing the transfer of all aliens in ICE custody, discourages transfers unless a FOD or his or her designee deems the transfer necessary for the reasons previously enumerated. ICE's transfer policy is designed to limit transfers for all aliens and provides adequate protection for aliens who have sexual abuse complaints or grievances. Providing regulatory authority for outside auditors lacking direct accountability to the ICE policy in place to protect detainees would not be appropriate. All auditors will have the ability, however, to make such recommendations to the FOD or his or her designee.

*Comment.* A commenter suggested that the auditor's standards and contact information be provided to every detainee and for the detainee to have the ability to confidentially contact the auditor for free.

*Response.* DHS agrees that detainees must have access to multiple ways to report abuse. This regulation includes multiple standards that ensure such access. In this case, however, DHS has determined that it is more appropriate to provide an auditor with discretion to conduct each investigation as it best sees fit, within the bounds of the PREA standards and consistent with other DHS policies. Additionally, paragraphs (i) and (j) of § 115.201 should provide reasonably sufficient avenues for detainee-auditor interaction by, respectively, requiring the agency and facilities to allow the auditor to conduct private interviews with detainees, and allowing detainees to send confidential information or correspondence to the auditor.

**Audit Contents and Findings (§ 115.203)**

*Summary of Proposed Rule*

The standard contained in the proposed rule mandated specific information that the auditor is required to include in its report to DHS.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

*Comment.* A commenter suggested that the facility bear the burden of demonstrating compliance with the PREA standards. It was recommended that this requirement be added to paragraph (b).

*Response.* Under the regulation, covered facilities bear the burden of compliance with all relevant provisions of the regulations; the audit will be directed to determining the facility's success or failure in that regard.

**Audit Corrective Action Plan (§ 115.204)**

*Summary of Proposed Rule*

The standard contained in the proposed rule required that when a facility ''Does Not Meet Standard'' after an audit, a 180-day corrective action plan is to be developed and implemented.

*Changes in Final Rule*

The final rule revises paragraph (b)'s description of the roles of the various entities regarding development of the corrective action plan in order to more clearly delineate responsibilities and to ensure the independence of the auditor is not compromised.

*Comments and Responses*

*Comment.* An advocacy group suggested the removal of the phrase ''if practicable'' written in paragraph (b). This change would require that in all cases the auditor, agency, and the facility jointly develop a corrective action plan to achieve compliance.

*Response.* DHS has considered the comment and agrees with the concerns expressed. By removing the notion that the facility need not be involved in development of the corrective action plan if impracticable, DHS clarifies in the final rule that the agency and the facility must develop the plan jointly. Additionally, DHS has determined that including the auditor as a party responsible for jointly developing the plan with the agency and the facility is not appropriate. Because of the auditor's unique role as an outside, independent analyst, and because the auditor may have further involvement in ensuring the agency and facility meets the standards in the future, removing the auditor from development of the corrective action plan ensures that the auditor's independent judgment is not compromised at any point. Under the final rule, the agency and the facility (if the facility is not operated by the agency) will develop the plan. The auditor can then effectively and independently make the determination as to whether the agency and facility have achieved compliance after the plan is implemented.

*Comment.* Several commenters suggested stating specific criteria that a facility must meet following a finding of ''Does Not Meet Standard.'' One group suggested creating a remediation plan for these facilities and another advocacy group suggested providing a specified period of time (suggested 180 days) for facilities to meet the requirements in the plan. One commenter suggested a similar 6-month probationary period. If

after this given period of time the facility does not meet the requirements given in the remediation plan, the facility would be terminated for an extended period of time (one commenter suggested three years) from housing any DHS detainees. One commenter suggested that this termination clause should also be listed in the agency/facility contract. An advocacy group generally suggested that DHS adopt a standard to prevent the housing of detainees in facilities that do not comply with the majority of the PREA standards and that fail to successfully implement a corrective action plan for those standards.

*Response.* The standards in the final rule and other DHS policies have been developed to ensure that noncompliance is not tolerated. Even prior to establishing these standards, ICE could withhold paying a contract facility's invoice or could remove detainees from a noncomplying facility. Facility contracts have already included and will continue to include the option to terminate or discontinue holding detainees if the facility does not meet standards after periods of remediation.

With respect to the specific proposals at issue, DHS has concerns that the suggested 180-day period of time to meet the requirements of a corrective action plan and similar 6-month probationary period may not be sufficiently long for many corrective actions, including, for example, actions that require construction or other physical renovation. Corrective action plans themselves are intended to create a process that will lead to full compliance. Therefore, DHS does not believe it is necessary to make changes to this standard.

**Audit Appeals (§ 115.205)**

*Summary of Proposed Rule*

The standard contained in the proposed rule allowed facilities to appeal the findings from an audit.

*Changes in Final Rule*

DHS is adopting the regulation as proposed.

*Comments and Responses*

DHS did not receive any public comments on this provision during the public comment period.

*Additional Comments and Responses*

The proposed rule posed several questions specifically regarding audits. The following contains a summary of comments received regarding the questions addressing these standards and the DHS response.

**Question 1: Would external audits of immigration detention facilities and/or holding facilities conducted through random sampling be sufficient to assess the scope of compliance with the standards of the proposed rule?**

Commenters were nearly unanimous that auditing through random sampling would not be sufficient. A collective comment of advocacy groups stated that random sampling requires some consistency among facilities in the broader sample; because of the variety of facilities at issue, sampling could not be conducted accurately. Commenters also pointed out that the degree of discretion vested in individual facility heads, the differences among the populations being held, and the differences in physical layout make use of random sampling insufficient for measuring compliance across facilities.

Former NPREC Commissioners stated that no rational basis for random sampling existed, as the only way to ensure detainees' safety from abuse is regular audits of all facilities without exception, citing DOJ final rule findings in support of a triennial cycle.

One human rights advocacy group found audits for cause acceptable, but only if in addition to regular, periodic audits, with auditing every three years being sufficient. The group stated that random audits or audits only for cause would not meet objectives such as providing oversight, transparency, accountability, and feedback in every facility. The group agreed with requiring every agency to have a full audit within the first three years after PREA's implementation, and if a facility receives an extremely high audit score, such as 90%, then the standard could allow a subsequent audit three years later to be a more streamlined version. The group expressed concerns with audits based on cause only, because it was unclear who would determine whether cause existed and when and on what basis that decision would be made.

*Response.* DHS agrees with the commenters that external audits of immigration detention facilities and holding facilities should not be conducted through random sampling. Audits selected by random sampling would not sufficiently assess the scope of compliance with PREA standards. Therefore, the agency maintains the final rule language in §§ 115.93 and 115.193 setting forth the definitive audit schedule for immigration detention facilities and holding facilities.

**Question 2: Once a holding facility is designated as low risk, would it be a more cost effective yet still sufficient approach to furthering compliance with the standards to externally audit a random selection of such facilities instead of re-auditing each such facility once every five years?**

DHS received conflicting comments in response to this question. A collection of various advocacy groups responded negatively to the idea of auditing a random selection of low-risk holding facilities instead of re-auditing each periodically. The groups, rejecting any use of random sampling, stated that any designation of a facility as low risk would be a mistake that does not account for the scope of the culture of change necessary to end the crisis of sexual abuse in confinement facilities.

*Response.* DHS agrees with the commenters that audits of immigration detention facilities and holding facilities should not be conducted through random sampling. Audits selected by random sampling would not sufficiently assess the scope of compliance with PREA standards. Therefore, the agency maintains the final rule language in §§ 115.93 and 115.193 setting forth the definitive audit schedule for immigration detention facilities and holding facilities.

**Question 3: Would the potential benefits associated with requiring external audits outweigh the potential costs?**

A commenter agreed that the benefits would outweigh the costs, stating that a realistic, cost-effective monitoring system is critical to the standards' overall effectiveness and impact. Commenters suggested that the external scrutiny, oversight, transparency, accountability, and credible assessment of safety that a qualified independent entity would bring are vitally important for confinement facilities, could identify systemic problems and could offer solutions. Commenters believed that thorough audits will help prevent abuse, improve facility safety, lead to more effective management, and, ultimately, lower fiscal and human costs to the community.

The groups also noted that it seemed DHS cost projections did not account for contract facilities already auditing under DOJ PREA standards, but that—as a cost-related measure—the two audits could be conducted simultaneously if the auditor were properly trained in differences between the standards and wrote separate, but related, reports for each set of standards. The group suggested that DHS consider

offering an abbreviated auditor training and certification process for auditors already certified by DOJ, focusing on the differences between the two sets of standards, the principles of civil confinement, and the unique features of DHS detainees.

*Response.* After reviewing the comments regarding Question 3, DHS decided to maintain the audit provisions set forth in Subpart C despite the fact that external auditing does incur financial costs to the agency. DHS agrees that external audits will be a valuable tool in assessing the standards' overall effectiveness and impact as well as help to prevent abuse, improve facility safety, and lead to more effective detention and custody management.

While DHS appreciates that some commenters acknowledged that external audits are required by both DOJ and DHS and that the agencies could be seen as conducting and financing redundant external audits, DHS believes that the unique detention missions of each agency warrant a separate audit process. If in the future DHS finds that an expedited certification process is preferable, DHS can implement such a process under § 115.202(b).

**Question 4: Is there a better approach to external audits other than the approaches discussed in the proposed rule?**

A commenter stated affirmatively that a better approach may exist, acknowledging it may include additional but reasonable costs. The groups expressed the following various changes that they believe would be improvements: (1) Audits could be conducted on an unannounced basis to ensure they are reviewing typical conditions; (2) facilities which have been required to take corrective action after an initial audit could be required to undergo a follow-up audit 18 months later to assess improvement; (3) auditors could be required to work in teams that include advocates and/or former detainees to increase comprehensiveness of inspection; (4) such teams could be required to meet with a certain percentage of current and former detainees and employees, contractors, and volunteers to accrue information; and (5) DHS could require that all facilities submit to expedited audits when requested by CRCL.

The collection of groups expressed that they believed DHS could amend its PREA auditing standards at a later date if, for example, after two complete three-year audit cycles under the groups' suggested standard, DHS could then better determine which facilities could appropriately be audited on a less-frequent basis; the data from the two cycles could also allow advocates to have concrete data to comment on such a revised plan.

*Response.* DHS appreciates the constructive comments provided by advocacy groups regarding the audit process. DHS is not substantively revising the audit provision in the final rule because the agency believes that the final rule provides an effective and efficient framework for external audits.

In response to the specific comments, DHS notes that unannounced audits would be overly burdensome for the facility and for agency personnel. Section 115.204 requires facilities with a finding of ''Does Not Meet Standards'' with one or more standards have 180 days to develop a corrective action plan. After the 180-day corrective action period, the auditor will issue a final determination as to whether the facility has achieved compliance. The agency will use this assessment to determine what steps are necessary to bring the facility into compliance or to determine that the facility is not safe for detainees and therefore, whether detainees must be transferred to other facilities. This process is an effective safeguard and therefore, an automatic 18-month follow-up audit is not necessary. DHS does not mandate the exact composition of the audit team, but rather requires that the audit be conducted by entities or individuals outside of the agency that have relevant audit experience. Paragraph (g) of § 115.201 already requires that the auditor interview a representative sample of detainees and staff. Finally, the agency does not believe that the agency's resources would be maximized if CRCL could automatically trigger expedited audits. CRCL already has the authority to conduct reviews related to civil rights and civil liberties issues at any facility that houses detainees. However, DHS acknowledges that CRCL will play an important role in developing audit procedures and guidelines. In light of this, §§ 115.93 and 115.193 have been revised to allow CRCL to request expedited audits if it has reason to believe that such an audit is appropriate.

**Question 5: In an external auditing process, what types of entities or individuals should qualify as external auditors?**

Some commenters described specific types of individuals who would or would not qualify as external auditors, while one set of advocates described typical characteristics contributing to a quality auditor. One commenter stated that such external auditors should consist of members of non-governmental organizations, attorneys, community members, media, and former detainees. Another organization stated that auditors should simply not be employees of DHS or the detention center, seemingly meaning the facility being audited; yet another set of groups stated that prior corrections or detention official experience alone would not suffice. Another commenter suggested that auditing requires a well-founded individual or team with prior expertise and/or training in both sexual violence dynamics and detention environments, with state certification in rape crisis counseling being a strongly-preferred qualification. Commenters wrote that requirements must include demonstrable skills in gathering information from traumatized individuals and ability to ascertain clues of possible concerns that detainees and others may not feel comfortable sharing.

*Response.* The agency in conjunction with CRCL is required by this rule to develop and issue guidance on the conduct of and contents of the audit. The agency must also certify all auditors and develop and issue procedures regarding the certification process, which must include training requirements.

Finally, DHS received a number of generalized comments relevant to the rulemaking but which did not specifically fall within any particular standard as embodied in the proposed rule.

*Comment.* Numerous comments were supportive of the standards, stating it is a good idea to promulgate a rule to prevent such assault and abuse.

*Response.* DHS agrees that this rule is an important tool for the agency to prevent, detect, and respond to sexual abuse and assault in confinement facilities.

*Comment.* Former Commissioners of NPREC suggested that DHS engage BJS to work to collect data on the prevalence of sexual abuse in DHS facilities, with the results of such surveys being available to the public. The former Commissioners believed the data to be necessary both for DHS and for the public to be able to understand the scope of abuse and to monitor the impact and success of the standards.

*Response.* DHS has considered the suggested approach in this comment; however, given the current budgetary environment, DHS does not have the resources to expend personnel and/or funds to develop and execute a separate additional survey and accompanying interagency agreement at this time. DHS

notes that BJS recently conducted a survey that included ICE facilities.[16]

In addition, the need for such a survey is negated by the fact that DHS itself, through ICE, has conducted surveys of the detainee population. The surveys have focused on conditions of detention, including the grievance process, staff retaliation, intake education—including regarding how to contact ICE personnel—posting of legal assistance information, and the Detainee Handbook, with space to add other information that the detainee may wish to share. DHS may consider conducting similar surveys in the future for comparison purposes.

Several commenters generally suggested that various standards should include ''critical protections'' for LGBTI detainees, in addition to the specific areas where LGBTI-related comments are listed above. Areas where commenters believed these protections are needed include in §§ 115.15, 115.115, Limits to cross-gender viewing and searches; § 115.42, Use of assessment information; § 115.43, Protective custody; §§ 115.62, 115.162, (Agency) Protection duties; § 115.53, Detainee access to outside confidential support services; and § 115.78, Disciplinary sanctions for detainees.

*Response.* As noted elsewhere that the issue has specifically arisen, DHS generally provides safety and security measures for all populations, including all those that may be vulnerable; DHS declines to make specific changes for the standards referred to in these comments, as the standards are intended to be flexible enough to fit many situations.

## V. Regulatory Analysis

We developed this rule after considering numerous statues and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statues or executive orders.

### *A. Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both the costs and benefits of reducing costs of harmonizing rules, and of promoting flexibility. This rule is a ''significant regulatory action,'' although not an economically significant regulatory action, under § 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

#### 1. Synopsis

Sexual violence against any victim is an assault on human dignity and an affront to American values. Many victims report persistent, even lifelong mental and physical suffering. As the National Prison Rape Elimination Commission (NPREC) explained in its 2009 report:

> Until recently . . . the public viewed sexual abuse as an inevitable feature of confinement. Even as courts and human rights standards increasingly confirmed that prisoners have the same fundamental rights to safety, dignity, and justice as individuals living at liberty in the community, vulnerable men, women, and children continued to be sexually victimized by other prisoners and corrections staff. Tolerance of sexual abuse of prisoners in the government's custody is totally incompatible with American values.[17]

*As discussed in the accompanying RIA,* ICE keeps records of any sexual abuse allegation made by detainees at all facilities in which it holds detainees in its Joint Integrity Case Management System (JICMS). In estimating the current level of sexual abuse for purposes of this analysis, DHS relies on facility-reported data in ICE's JICMS database. In 2010, ICE had four substantiated sexual abuse allegations in immigration detention facilities, two in 2011, and one in 2012. There were no substantiated allegations by individuals detained in a DHS holding facility.[18] In the RIA, DHS extrapolates the number of substantiated and unsubstantiated allegations at immigration detention facilities based on the premise that there may be additional detainees who may have experienced sexual abuse but did not report it. Table 1 below summarizes the estimated number of sexual abuse allegations at ICE confinement facilities.

TABLE 1—ESTIMATED BENCHMARK LEVEL OF ADULT SEXUAL ABUSE AT ICE CONFINEMENT FACILITIES, BY APPROACH AND TYPE OF ALLEGATION

| Class code | Subject | Lower bound approach | Primary | Adjusted approach |
|---|---|---|---|---|
| 1: Nonconsensual Acts—High | Detainee-on-Detainee | 0.0 | 4.9 | 9.9 |
| | Staff-on Detainee | 0.0 | 3.8 | 7.7 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 0.0 | 8.8 | 17.6 |
| 2: Nonconsensual Acts—Low | Detainee-on-Detainee | 0.0 | 4.9 | 9.9 |
| | Staff-on-Detainee | 1.8 | 5.7 | 9.6 |
| | Unknown | 0.0 | 0.8 | 1.6 |
| Subtotal | | 1.8 | 10.6 | 19.5 |
| 3: ''Willing'' Sex with Staff | Detainee-on-Detainee | 0.0 | 0.0 | 0.0 |
| | Staff-on-Detainee | 0.0 | 1.0 | 1.9 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 0.0 | 1.0 | 1.9 |

[16] BJS, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Nat'l Inmate Survey, 2011–12 (May 2013), *http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf.*

[17] National Prison Rape Elimination Commission Report 1 (2009), *http://www.ncjrs.gov/pdffiles1/226680.pdf.*

[18] This does not include allegations involved in still-open investigations or allegations outside the scope of these regulations.

TABLE 1—ESTIMATED BENCHMARK LEVEL OF ADULT SEXUAL ABUSE AT ICE CONFINEMENT FACILITIES, BY APPROACH AND TYPE OF ALLEGATION—Continued

| Class code | Subject | Lower bound approach | Primary | Adjusted approach |
|---|---|---|---|---|
| 4: Abusive Sexual Contacts—High | Detainee-on-Detainee | 2.6 | 5.5 | 8.4 |
| | Staff-on-Detainee | 0.0 | 0.0 | 0.0 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 2.6 | 5.5 | 8.4 |
| 5: Abusive Sexual Contacts—Low | Detainee-on-Detainee | 2.6 | 18.2 | 33.8 |
| | Staff-on-Detainee | 0.0 | 0.0 | 0.0 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 2.6 | 18.2 | 33.8 |
| 6: Staff Sexual Misconduct Touching Only | Detainee-on-Detainee | 0.0 | 0.0 | 0.0 |
| | Staff-on-Detainee | 0.0 | 20.2 | 40.4 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 0.0 | 20.2 | 40.4 |
| Sexual Harassment Not Involving Touching | Detainee-on-Detainee | 0.0 | 5.6 | 11.3 |
| | Staff-on-Detainee | 3.5 | 13.3 | 23.1 |
| | Unknown | 0.0 | 0.0 | 0.0 |
| Subtotal | | 3.5 | 18.9 | 34.4 |
| Total | | 10.4 | 83.2 | 156.0 |

**Note:** Details may not sum to total due to rounding for shown values.

In order to address the allegations of sexual abuse at DHS immigration detention and holding facilities, the final rule sets minimum requirements for the prevention, detection, and response to sexual abuse. Specifically, the rule establishes standards for prevention planning; prompt and coordinated response and intervention; training and education of staff, contractors, volunteers and detainees; proper treatment for victims; procedures for investigation, discipline and prosecution of perpetrators; data collection and review for corrective action; and audits for compliance with the standards. DHS estimates that the full cost of compliance with these standards at all covered DHS confinement facilities will be approximately $57.4 million over the period 2013–2022, discounted at 7 percent, or $8.2 million per year when annualized at a 7 percent discount rate.

With respect to benefits, DHS conducts what is known as a ''break even analysis,'' by first estimating the monetary value of preventing various types of sexual abuse (incidents involving violence, inappropriate touching, or a range of other behaviors) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of compliance. When all facilities and costs are phased into the rulemaking, the break even point would be reached if the standards reduced the annual number of incidents of sexual abuse by 122 from the estimated benchmark levels, which is 147 percent of the total number of assumed incidents in ICE confinement facilities, including an estimated number of those who may not have reported an incident.[19]

There are additional benefits of the rule that DHS is unable to monetize or quantify. Not only will victims benefit from a potential reduction in sexual abuse in facilities, so too will DHS agencies and staff, other detainees, and society as a whole. As noted by Congress, sexual abuse increases the levels of violence within facilities. Both staff and other detainees will benefit from a potential reduction in levels of violence and other negative factors. 42 U.S.C. 15601(14). This will improve the safety of the environment for other detainees and workplace for facility staff. In addition, long-term trauma from sexual abuse in confinement may diminish a victim's ability to reenter society resulting in unstable employment. Preventing these incidents will decrease the cost of health care, spread of disease, and the amount of public assistance benefits required for victims upon reentry into society, whether such reentry is in the United States or a detainee's home country.

Table 2, below, presents a summary of the benefits and costs of the final rule. The costs are discounted at seven percent.

TABLE 2—ESTIMATED COSTS AND BENEFITS OF FINAL RULE

[$millions]

| | Immigration detention facilities | Holding facilities | Total DHS PREA rulemaking |
|---|---|---|---|
| 10-Year Cost Annualized at 7% Discount Rate | $4.9 | $3.3 | $8.2 |

[19] As discussed in Chapter 1, and shown in Table 17, of the accompanying RIA, the benchmark level of sexual assaults includes all types of sexual assaults.

TABLE 2—ESTIMATED COSTS AND BENEFITS OF FINAL RULE—Continued

[$millions]

| | Immigration detention facilities | Holding facilities | Total DHS PREA rulemaking |
|---|---|---|---|
| % Reduction of Sexual Abuse Victims to Break Even with Monetized Costs | N/A | N/A | 147%* |
| Non-monetized Benefits | An increase in the general wellbeing and morale of detainees and staff, the value of equity, human dignity, and fairness for detainees in DHS custody. | | |
| Net Benefits | As explained above, we did not estimate the number of incidents or victims of sexual abuse this rule would prevent. Instead, we conducted a breakeven analysis. Therefore, we did not estimate the net benefits of this rule. | | |

* For ICE confinement facilities.

2. Summary of Affected Population

This rule covers two types of confinement facilities: (1) Immigration detention facilities, and (2) holding facilities. Immigration detention facilities, which are operated or supervised by ICE, routinely hold persons for over 24 hours pending resolution or completion of immigration removal or processing. Holding facilities, used and maintained by DHS components including ICE and CBP, tend to be short-term. The analysis below presents immigration detention facilities and holding facilities separately.

This rule directly regulates the Federal Government, notably any DHS agency with immigration detention facilities or holding facilities. This rule also affects private and public entities that operate confinement facilities under contracts or agreements with DHS. The sections below describe and quantify, where possible, the number of affected immigration detention facilities and holding facilities.

a. Subpart A—Immigration Detention Facilities

ICE is the only DHS component with immigration detention facilities. ICE holds detainees during proceedings to determine whether they will be removed from the United States, and pending their removal, in ICE-owned facilities or in facilities contracting with ICE. Therefore, though this rule directly regulates the Federal Government, it requires that its standards ultimately apply to some State and local governments as well as private entities through contracts with DHS. The types of authorized ICE immigration detention facilities are as follows:

- Service Processing Center (SPC)—full service immigration facilities owned by the government and staffed by a combination of Federal and contract staff;
- Contract Detention Facility (CDF)—owned by a private company and contracted directly with the government; and
- Intergovernmental Service Agreement Facility (IGSA)—facilities at which detention services are provided to ICE by State or local government(s) through agreements with ICE and which may fall under public or private ownership and may be fully dedicated immigration facilities (housing detained aliens only) or non-dedicated facilities (housing various detainees).

ICE enters into IGSAs with States and counties across the country to use space in jails and prisons for civil immigration detention purposes. Some of these facilities are governed by IGSAs that limit the length of an immigration detainee's stay to less than 72 hours. Some of these facilities have limited bed space that precludes longer stays by detainees. Others are used primarily under special circumstances such as housing a detainee temporarily to facilitate detainee transfers or to hold a detainee for court appearances in a different jurisdiction. In some circumstances the under-72-hour facilities house immigration detainees only occasionally.

ICE owns or has contracts with approximately 158 authorized immigration detention facilities that hold detainees for more than 72 hours.[20] The 158 facilities consist of 6 SPCs, 7 CDFs, 9 dedicated IGSA facilities, and 136 non-dedicated IGSA facilities. Sixty four of the non-dedicated IGSA facilities are covered by the DOJ PREA, not this rule, because they are USMS IGA facilities. As the USMS IGA facilities are not within the scope of this rulemaking, this analysis covers the 94 authorized SPC, CDF, dedicated IGSA, and non-dedicated IGSA immigration detention facilities that hold detainees for more than 72 hours.

ICE additionally has 91 authorized immigration detention facilities that are contracted to hold detainees for less than 72 hours.[21] All 91 facilities are non-dedicated IGSA facilities, but 55 of them are covered by the DOJ PREA rule, not this rule, because they are USMS IGA facilities. Again, ICE excludes the USMS IGA facilities from the scope of this rulemaking and analysis; the analysis covers the 36 authorized non-dedicated IGSA immigration detention facilities that hold detainees for under 72 hours. Facilities that are labeled by ICE as ''under 72-hour'' still meet the definition of immigration detention facilities, because they process detainees for detention intake. Detainees housed in these facilities are processed into the facility just as they would be in a long-term detention facility.

Furthermore, ICE also has two authorized family residential centers. These are IGSA facilities that house only ICE detainees. One of the facilities accommodates families subject to mandatory detention and the other is a dedicated female facility. ICE family residential centers are subject to the immigration detention facility standards proposed in Subpart A. The table below

[20] As noted above, facilities ICE used as of spring 2012, and the sexual abuse and assault standards to which facilities were held accountable or planned to be held accountable at that time, serve as the baseline for the cost estimates for this rulemaking.

[21] As noted above, facilities ICE used as of spring 2012, and the sexual abuse and assault standards to which facilities were held accountable or planned to be held accountable at that time, serve as the baseline for the cost estimates for this rulemaking.

summarizes the facilities included in this analysis.

TABLE 1—SUMMARY OF ICE AUTHORIZED IMMIGRATION DETENTION FACILITIES

| Facility | Over 72 hours | Under 72 hours | Family residential |
|---|---|---|---|
| Non-Dedicated IGSA | 74 | 36 | 0 |
| SPC | 6 | 0 | 0 |
| CDF | 7 | 0 | 0 |
| Dedicated IGSA | 7 | 0 | 2 |
| Total Covered by Rule | 94 | 36 | 2 |
| USMS IGA [a] | 64 | 55 | 0 |
| Total Authorized Facilities | 158 | 91 | 2 |

[a] Not within the scope of the rulemaking. USMS confinement facilities are covered by DOJ's PREA regulations.

b. Subpart B—Holding Facilities

A holding facility may contain holding cells, cell blocks, or other secure locations that are: (1) under the control of the agency and (2) primarily used for the confinement of individuals who have recently been detained, or are being transferred to another agency.

i. U.S. Immigration and Customs Enforcement

Most ICE holding rooms are in ICE field offices and satellite offices. These rooms are rooms or areas that are specifically designed and built for temporarily housing detainees in ICE ERO offices. It may also include staging facilities. ICE holding facilities as presented in this analysis are exclusive of hold rooms or staging areas at immigration detention facilities, which are covered by the standards of the immigration detention facility under Subpart A of this rule. ICE has 149 holding facilities that are covered under Subpart B of the rule.

ii. U.S. Customs and Border Protection

There is a wide range of facilities where CBP detains individuals. Some individuals are detained in secured detention areas, while others are detained in open seating areas where agents or officers interact with the detainee. Hold rooms in CBP facilities where case processing occurs are used to search, detain, or interview persons who are being processed. CBP operates 768 holding facilities at ports of entry and Border Patrol stations, checkpoints, and processing facilities across the country.

The number of detainees in CBP custody fluctuates. Consequently, at times CBP is unable to accommodate its short-term detention needs through its facilities. Similar to ICE, CBP has entered into approximately 14 contracts with State, local, and/or private entity facilities on a rider to a USMS contract that provides for a consistent arrangement with particular facilities to cover instances in which CBP has insufficient space to detain individuals. Because CBP entered into these contracts via a rider to a USMS contract, the impacts to these facilities have been accounted for in the DOJ's PREA rule and to consider them again here would double count any costs and/or benefits associated with these facilities. As such, these facilities are excluded from this analysis.

3. Costs of Rule

This rule covers DHS immigration detention facilities and holding facilities. Table 3 summarizes the number of facilities covered by the rulemaking over 10 years.

TABLE 3—ESTIMATED POPULATION SUMMARY FOR RULE

| Year | Immigration detention facilities | Holding facilities | | Total |
|---|---|---|---|---|
| | ICE | ICE | CBP | |
| 1 | 132 | 149 | 768 | 1,049 |
| 2 | 134 | 149 | 768 | 1,051 |
| 3 | 136 | 149 | 768 | 1,053 |
| 4 | 138 | 149 | 768 | 1,055 |
| 5 | 140 | 149 | 768 | 1,057 |
| 6 | 142 | 149 | 768 | 1,059 |
| 7 | 144 | 149 | 768 | 1,061 |
| 8 | 146 | 149 | 768 | 1,063 |
| 9 | 148 | 149 | 768 | 1,065 |
| 10 | 150 | 149 | 768 | 1,067 |

The cost estimates set forth in this analysis represent the costs of compliance with, and implementation of, the standards in facilities within the scope of the rulemaking.[22] This final rule implements many of the proposed

[22] The baseline for these cost estimates is the sexual abuse and assault standards to which facilities were held accountable or planned to be held accountable at the time of writing the NPRM. Since the NPRM, ICE has made great strides in implementing sexual abuse and assault standards in facilities. As a result, the baseline of the rule from which the costs and benefits of the rulemaking were estimated, differ from the current sexual abuse and assault standards at some facilities.

standards in the NPRM. In addition, DHS made a number of changes to provisions set forth in the NPRM based on public comments. These changes are discussed previously in the preamble. DHS received no public comments on the estimates in the economic analysis.

After analyzing the changes made in this final rule, DHS concludes the only cost change from the NPRM with more than a de minimis impact results from expanding the scope of training requirements for personnel that have contact with detainees under § 115.32. This change resulted in an increase in estimated cost of approximately $16,000 per year. DHS also fixed a mistake in estimating the year audits would begin for facilities. Thus, this analysis estimates that compliance with the standards, in the aggregate, will be approximately $57.4 million, discounted at 7 percent, over the period 2013–2022, or $8.2 million per year when annualized at a 7 percent discount rate. Table 4 below, presents a 10-year summary of the estimated benefits and costs of the final rule.

TABLE 4—TOTAL COST OF FINAL RULE

[$millions]

| Year | Immigration detention facilities subpart A | | Holding facilities subpart B | | Total |
|---|---|---|---|---|---|
| | Over 72 hours | Under 72 hours | ICE | CBP | |
| 1 | $3.9 | $1.2 | $0.0 | $5.6 | $10.7 |
| 2 | 3.6 | 1.1 | 0.0 | 5.5 | 10.1 |
| 3 | 3.6 | 1.1 | 0.0 | 3.6 | 8.3 |
| 4 | 3.7 | 1.1 | 0.0 | 2.4 | 7.1 |
| 5 | 3.7 | 1.1 | 0.0 | 2.4 | 7.2 |
| 6 | 3.7 | 1.1 | 0.0 | 2.3 | 7.2 |
| 7 | 3.8 | 1.1 | 0.0 | 2.3 | 7.2 |
| 8 | 3.8 | 1.1 | 0.0 | 2.3 | 7.2 |
| 9 | 3.8 | 1.1 | 0.0 | 2.3 | 7.2 |
| 10 | 3.8 | 1.2 | 0.0 | 2.3 | 7.2 |
| Total | 37.4 | 11.3 | 0.0 | 31.0 | 79.6 |
| Total (7%) | 26.2 | 7.9 | 0.0 | 23.2 | 57.4 |
| Total (3%) | 31.9 | 9.6 | 0.0 | 27.2 | 68.7 |
| Annualized (7%) | 3.7 | 1.1 | 0.0 | 3.3 | 8.2 |
| Annualized (3%) | 3.7 | 1.1 | 0.0 | 3.2 | 8.0 |

The total cost, discounted at 7 percent, consists of $34.1 million for immigration detention facilities under Subpart A, and $23.2 million for holding facilities under Subpart B. The largest costs for immigration detention facilities are for staff training, documentation of cross-gender pat downs, duties for the PSA Compliance Manager, and audit requirements. DHS estimates zero compliance costs for ICE holding facilities under this rule as the requirements of ICE's SAAPID and other ICE policies are commensurate with the requirements of the rule. The largest costs for CBP holding facilities are staff training, audits, and facility design modifications and monitoring technology upgrades.

4. Benefits of the Rule

DHS has not estimated the anticipated monetized benefits of this rule or how many incidents or victims of sexual abuse DHS anticipates will be avoided by this rule. Instead, DHS conducts what is known as a ''break even analysis,'' by first estimating the monetary value of preventing victims of various types of sexual abuse (from incidents involving violence to inappropriate touching) and then, using those values, calculating the reduction in the annual number of victims that would need to occur for the benefits of the rule to equal the cost of compliance. The NPRM estimated the benefits based on sexual abuse data from 2011, the most recent full year of data at that time. DHS has included sexual abuse data from 2010, 2011, and 2012 in this final analysis. In addition, since the publication of the NPRM, ICE's PSA Coordinator has reviewed the individual reports and data from these years and assigned a level of sexual victimization to each based on the levels used in the DOJ PREA RIA.[23] This has allowed DHS to provide a more comprehensive assessment of sexual abuse in ICE confinement facilities, and the estimated avoidance value of preventing such abuse. The DHS RIA concludes that when all facilities and costs are phased into the rulemaking, the breakeven point will be reached if the standards reduced the annual number of incidents of sexual abuse by 122 from the estimated benchmark level, which is 147 percent of the total number of assumed incidents in ICE confinement facilities, including those who may not have reported an incident.

There are additional benefits of the rule that DHS is unable to monetize or quantify. Not only will victims benefit from a potential reduction in sexual abuse in facilities, so too will DHS agencies and staff, other detainees, and society as a whole. As noted by Congress, sexual abuse increases the levels of violence within facilities. Both staff and other detainees will benefit from a potential reduction in levels of violence and other negative factors. 42 U.S.C. 15601(14). This will improve the safety of the environment for other detainees and workplace for facility staff. In addition, long-term trauma from sexual abuse in confinement may diminish a victim's ability to reenter society resulting in unstable

[23] Department of Justice, Regulatory Impact Analysis for the National Standards to Prevent, Detect, and Respond to Prison Rape under PREA, Table 1.1 on page 24 of 168, *available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf.*

employment. Preventing these incidents will decrease the cost of health care, spread of disease, and the amount of public assistance benefits required for victims upon reentry into society, whether such reentry is in the United States or a detainee's home country.

5. Alternatives

As alternatives to the regulatory regime discussed in this rule, DHS examined three other options. The first is taking no regulatory action. For over 72-hour immigration detention facilities, the 2011 PBNDS sexual abuse standards might reach all facilities over time as the new version of the standards are implemented at facilities as planned. However, in the absence of regulatory action, sexual abuse standards for ICE's under 72-hour immigration detention facilities and DHS's holding facilities would remain largely the same.

DHS also considered requiring the ICE immigration detention facilities that are only authorized to hold detainees for under 72 hours to meet the standards for holding facilities under Subpart B, rather than the standards for immigration detention in Subpart A, as discussed in the final rule. The standards in Subpart B are somewhat less stringent than those for immigration detention facilities, as appropriate for facilities holding detainees for a much shorter time and with an augmented level of direct supervision.

Finally, DHS considered changing the audit requirements under §§ 115.93 and 115.193. Immigration detention facilities currently undergo several layers of inspections for compliance with ICE's detention standards. This alternative would allow ICE to incorporate the audit requirements for the standards into current inspection procedures. However, it would require outside auditors for all immigration detention facilities. For holding facilities that hold detainees overnight, it would require 10 internal audits, 10 external audits, and three audits by CRCL be conducted annually. The following table presents the 10-year costs of the alternatives compared to the costs of the final rule. These costs of these alternatives are discussed in detail in Chapter 2 of the Final RIA.

TABLE 5—COST COMPARISON OF REGULATORY ALTERNATIVES TO THE FINAL RULE

[$millions]

| 10-Year total costs by alternative | Total | Total (7%) | Total (3%) |
|---|---|---|---|
| Alternative 1—No Action | $0 | $0 | $0 |
| Alternative 2—Under 72-Hour | 77.4 | 55.7 | 66.7 |
| Alternative 3—Final Rule | 79.6 | 57.4 | 68.7 |
| Alternative 4—Audit Requirements | 70.1 | 50.5 | 60.4 |

*B. Executive Order 13132—Federalism*

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. This rule implements the Presidential Memorandum of May 17, 2012 ''Implementing the Prison Rape Elimination Act'' and the requirements found in the recently enacted VAWA Reauthorization (Mar. 7, 2013) by setting forth national DHS standards for the detection, prevention, reduction, and punishment of sexual abuse in DHS immigration detention and holding facilities. In drafting the standards, DHS was mindful of its obligation to meet the President's objectives and Congress's intent while also minimizing conflicts between State law and Federal interests.

Insofar, however, as the rule sets forth standards that might apply to immigration detention facilities and holding facilities operated by State and local governments and private entities, this rule has the potential to affect the States, the relationship between the Federal government and the States, and the distribution of power and responsibilities among the various levels of government and private entities. With respect to the State and local agencies, as well as the private entities, that own and operate these facilities across the country, the Presidential Memorandum provides DHS with no direct authority to mandate binding standards for their facilities. However, in line with Congress's and the President's statutory direction in the VAWA Reauthorization that the standards are to apply to DHS-operated detention facilities and to detention facilities operated under contract with DHS, including CDFs and detention facilities operated through an IGSA with DHS, these standards impact State, local, and private entities to the extent that such entities make voluntary decisions to contract with DHS for the confinement of immigration detainees or that such entities and DHS agree to enter into a modification or renewal of such contracts. This approach is fully consistent with DHS's historical relationship to State and local agencies in this context. Therefore, in accordance with Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Notwithstanding the determination that the formal consultation process described in Executive Order 13132 is not required for this rule, DHS welcomed consultation with representatives of State and local prisons and jails, juvenile facilities, community corrections programs, and lockups—among other individuals and groups—during the course of this rulemaking.

*C. Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988.

*D. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1532) generally requires agencies to prepare a statement before submitting any rule that may result in an annual expenditure of $100 million or more (adjusted annually for inflation) by State, local, or tribal governments, or by the private sector. DHS has assessed the probable impact of these regulations and believes these regulations may result in an aggregate expenditure by State and local governments of approximately $4.3 million in the first year.

However, DHS believes the requirements of the UMRA do not apply to these regulations because UMRA excludes from its definition of ''Federal intergovernmental mandate'' those regulations imposing an enforceable duty on other levels of government which are ''a condition of Federal

assistance.'' 2 U.S.C. 658(5)(A)(i)(I). Compliance with these standards would be a condition of ongoing Federal assistance through implementation of the standards in new contracts and contract renewals. While DHS does not believe that a formal statement pursuant to the UMRA is required, it has, for the convenience of the public, summarized as follows various matters discussed at greater length elsewhere in this rulemaking which would have been included in a UMRA statement should that have been required:

- These standards are being issued pursuant to the Presidential Memorandum of May 17, 2012, section 1101 of the VAWA Reauthorization, and DHS detention authorities.
- A qualitative and quantitative assessment of the anticipated costs and benefits of these standards appears below in the Regulatory Flexibility Act (RFA) section;
- DHS does not believe that these standards will have an effect on the national economy, such as an effect on productivity, economic growth, full employment, creation of productive jobs, or international competitiveness of United States goods and services;
- Before it issued these final regulations DHS:

(1) Provided notice of these requirements to potentially affected small governments by publishing the NPRM, and by other activities;

(2) Enabled officials of affected small governments to provide meaningful and timely input, via the methods listed above; and

(3) Worked to inform, educate, and advise small governments on compliance with the requirements.

- As discussed above in the RIA summary, DHS has identified and considered a reasonable number of regulatory alternatives and from those alternatives has attempted to select the least costly, most cost effective, or least burdensome alternative that achieves DHS's objectives.

*E. Small Business Regulatory Enforcement Fairness Act of 1996*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, DHS wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact DHS via the address or phone number provided in the **FOR FURTHER INFORMATION CONTACT** section above. DHS will not retaliate against small entities that question or complain about this rule or about any policy or action by DHS related to this rule.

*F. Regulatory Flexibility Act*

DHS drafted this final rule so as to minimize its impact on small entities, in accordance with the RFA, 5 U.S.C. 601–612, while meeting its intended objectives. The term ''small entities'' comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Based on presently available information, DHS is unable to state with certainty that the rule will not have any effect on small entities of the type described in 5 U.S.C. 601(3). Accordingly, DHS has prepared a Final Regulatory Flexibility Impact Analysis in accordance with 5 U.S.C. 604.

1. A Statement of the Need for, and Objectives of, the Rule

In 2003 Congress enacted PREA, Public Law 108–79 (Sept. 4, 2003). PREA directs the Attorney General to promulgate national standards for enhancing the prevention, detection, reduction, and punishment of prison rape. On May 17, 2012, DOJ released a final rule setting national standards to prevent, detect, and respond to prison rape for facilities operated by BOP and USMS. The final rule was published in the **Federal Register** on June 20, 2012. 77 FR 37106 (June 20, 2012). In its final rule, DOJ concluded that PREA ''encompass[es] any Federal confinement facility 'whether administered by [the] government or by a private organization on behalf of such government.' '' *Id.* at 37113 (quoting 42 U.S.C. 15609(7)). DOJ recognized, however, that, in general, each Federal agency is accountable for, and has statutory authority to regulate the operations of its own facilities and is best positioned to determine how to implement Federal laws and rules that govern its own operations, staff, and persons in custody. *Id.* The same day that DOJ released its final rule, President Obama issued a Presidential Memorandum directing Federal agencies with confinement facilities to issue regulations or procedures within 120 days of his Memorandum to satisfy the requirements of PREA. On March 7, 2013, Congress enacted a statutory mandate in the VAWA Reauthorization directing DHS to publish, within 180 days of enactment, a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in immigration confinement settings. *See* Public Law 113–4 (Mar. 7, 2013). This regulation responds to and fulfills the President's direction and the VAWA Reauthorization statutory mandate by creating comprehensive, national regulations for the detection, prevention, and reduction of prison rape at DHS confinement facilities.

DHS uses a variety of legal authorities, which are listed below in the ''Authority'' provision preceding the regulatory text, to detain individuals in confinement facilities. Most individuals detained by DHS are detained in the immigration removal process, and normally DHS derives its detention authority for these actions from § 236(a) of the INA, 8 U.S.C. 1226(a), which provides the authority to arrest and detain an alien pending a decision on whether the alien is to be removed from the United States, and § 241(a)(2) of the INA, 8 U.S.C. 1231(a)(2), which provides the authority to detain an alien during the period following the issuance of an order of removal. DHS components, however, use many other legal authorities to meet their statutory mandates and to detain individuals during the course of executing DHS missions.

The objective of the rule is to create minimum requirements for DHS immigration detention and holding facilities for the prevention, detection, and response to sexual abuse. The rule will ensure prompt and coordinated response and intervention, proper treatment for victims, discipline and prosecution of perpetrators, and effective oversight and monitoring to prevent and deter sexual abuse.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA), a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

DHS did not receive any public comments in response to the initial regulatory flexibility analysis.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

DHS did not receive comments from the Chief Counsel for Advocacy of the

Small Business Administration in response to the proposed rule.

4. A Description of and an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

This rule will affect owners of DHS confinement facilities, including private owners, State and local governments, and the Federal government. DHS has two types of confinement facilities: (1) Immigration detention facilities, and (2) holding facilities. Holding facilities tend to be short-term in nature. ICE, in particular, is charged with administration of the immigration detention facilities while CBP and ICE each have many holding facilities under their detention authority. The analysis below addresses immigration detention facilities and holding facilities separately.

i. Immigration Detention Facilities

ICE divides its detention facilities into two groups: There are 158 for use over 72 hours, and 91 that typically hold detainees for more than 24 hours and less than 72 hours. These are treated separately, below. Further, there are several types of immigration detention facilities. SPC facilities are ICE-owned facilities and staffed by a combination of Federal and contract staff. CDFs are owned by a private company and contracted directly with ICE. Detention services at IGSA facilities are provided to ICE by State or local governments(s) through agreements with ICE and may be owned by the State or local government, or by a private entity. Finally, there are two types of IGSA facilities: dedicated and non-dedicated. Dedicated IGSA facilities hold only detained aliens whereas non-dedicated facilities hold a mixture of detained aliens and inmates. ICE does not include USMS IGA facilities used by ICE under intergovernmental agreements in the scope of this rulemaking. Those facilities would be covered by the DOJ PREA standards. Any references to authorized immigration detention facilities are exclusive of these 119 USMS IGA facilities.

Of the current 158 ICE detention facilities that are for use over 72 hours, 6 are owned by the Federal government and are not subject to the RFA. An additional 64 are covered not by this rule but by the DOJ PREA rule, as USMS IGA facilities. Of the 88 facilities subject to the RFA, there are 79 distinct entities. DHS uses ICE information and public databases such as Manta.com and data from the U.S. Census Bureau [24] to search for entity type (public, private, parent, subsidiary, etc.), primary line of business, employee size, revenue, population, and any other necessary information. This information is used to determine if an entity is considered small by the SBA size standards, within its primary line of business.

Of the 79 entities owning immigration detention facilities and subject to the RFA, the search returned 75 entities for which sufficient data are available to determine if they are small entities, as defined by the RFA. The table below shows the North American Industry Classification System (NAICS) codes corresponding with the number of facilities for which data are available. There are 27 small governmental jurisdictions, one small business, and one small not-for-profit. In order to ensure that the interests of small entities are adequately considered, DHS assumes that all entities without available ownership, NAICS, revenue, or employment data are small entities. Therefore, DHS estimates there are a total of 33 small entities to which this rule applies. The table below shows the number of small entities by type for which data are available.

TABLE 5—SMALL ENTITIES BY TYPE—IMMIGRATION DETENTION FACILITIES

| Type | Entities found | SBA Size standard |
|---|---|---|
| Small Governmental Jurisdiction | 27 | Population less than 50,000. |
| Small Business | 1 | $7 million (NAICS 488999); $30 million (NAICS 488119). |
| Small Organization | 1 | Independently owned and operated not-for-profit not dominant in its field. |
| Subtotal | 29 | |
| Entities without Available Information | 4 | |
| Total Small Entities | 33 | |

ICE also has shorter-term immigration detention facilities, for several reasons: Some of ICE's immigration detention facilities are governed by IGSAs that limit the length of an immigration detainee's stay to less than 72 hours for various reasons. Some of these facilities have limited bed space that precludes longer stays by detainees. Others are used primarily under special circumstances such as housing a detainee temporarily to facilitate detainee transfers or to hold a detainee for court appearances in a different jurisdiction. In some circumstances the under 72-hour facilities are located in rural areas that only occasionally have immigration detainees.

At the time of writing, ICE has 91 immigration detention facilities which are used to detain individuals for less than 72 hours. Of those, three are owned by the Federal or State government and are not subject to the RFA. An additional 55 are covered not by this rule but by the DOJ PREA rule, as USMS IGA facilities. Of the 33 facilities subject to the RFA, all are owned by distinct entities. Again, DHS uses public databases such as Manta.com and U.S. Census Bureau to search for entity type, primary line of business, employee size, revenue, population, and any other necessary information needed to determine if an entity is considered small by SBA size standards.

Of the 33 entities owning immigration detention facilities and subject to the RFA, all have sufficient data available to determine if they are small entities as defined by the RFA. The table below shows the NAICS codes corresponding with the number of facilities for which data are available. DHS determines there are 10 small governmental jurisdictions, 0 small businesses, and 0 small organizations. The table below shows

[24] U.S. Census Bureau, State and County QuickFacts, 2010 Population Data, *available at http://quickfacts.census.gov/qfd/index.html.*

the number of small entities by type for which data are available.

TABLE 6—SMALL ENTITIES BY TYPE—OTHER DHS CONFINEMENT FACILITIES

| Type | Entities found | SBA Size standard |
|---|---|---|
| Small Governmental Jurisdiction | 10 | Population less than 50,000. |
| Small Business | 0 | |
| Small Organization | 0 | |
| Total Small Entities | 10 | |

At the time of writing, ICE has two immigration detention facilities that are considered family residential facilities. Both are owned by counties. Again, DHS uses public databases such as Manta.com and U.S. Census Bureau to search for entity type, primary line of business, employee size, revenue, population, and any other necessary information needed to determine if an entity is considered small by SBA size standards. DHS was able to obtain sufficient data to determine if they are small entities. Based on the size of the counties, DHS determines neither are considered small governmental jurisdictions as defined by the RFA.

In summary, DHS estimates the number of small entities covered by this rulemaking is 33 over 72-hour immigration detention facilities, 10 under 72-hour facilities, and 2 family residential facilities, for a total of 45 small entities.

ii. Holding Facilities

*U.S. Customs and Border Protection.* CBP operates 768 facilities with holding facilities. Of the 768, 364 are owned by private sector entities. CBP is responsible for funding any facility modifications once CBP has begun operations at the location. As such, any modifications at these facilities as a result of this rule will have no direct impact on the facilities.

*U.S. Immigration and Customs Enforcement.* Most ICE hold rooms are in ICE field offices and satellite offices. ICE estimates it has 149 holding facilities that are covered under the rule. None of these facilities are considered small entities under the RFA.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

With regard to non-DHS facilities, the requirements of the rule are applicable only to new detention contracts with the Federal Government, and to contract renewals. To the extent this rule increases costs to any detainment facilities, which may be small entities, it may be reflected in the cost paid by the Federal Government for the contract. Costs associated with implementing the rule paid by the Federal Government to small entities are transfer payments ultimately born by the Federal Government. However, DHS cannot say with certainty how much, if any, of these costs will be paid in the form of increased bed rates for facilities. Therefore, for the purposes of this analysis, DHS assumes all costs associated with the rule will be borne by the facility. Of the 45 small entities, 37 operate under the NDS. The following discussion addresses the standards that may create implementation costs for facilities that are currently operating under the ICE NDS.

i. Contracting With Other Non-DHS Entities for the Confinement of Detainees, § 115.12

The rule requires that any new contracts or contract renewals comply with the rule and provide for agency contract monitoring to ensure that the contractor is complying with these standards. Therefore, DHS adds a 20-hour opportunity cost of time for the contractor to read and process the modification, determine if a request for a rate increase is necessary, and have discussions with the government if needed. DHS estimates this standard may cost a facility approximately $1,488 (20 hours × $74.41) in the first year.[25]

[25] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, NAICS 999300, SOC 11–1021 General and Operations Manager Median Hourly Wage, retrieved on June 29, 2012 from *http://www.bls.gov/oes/2011/may/naics4_999300.htm.* Loaded for benefits. Bureau of Labor Statistics, Employer Cost for Employee Compensation, June 2011, Table 3: Employer Costs per hour worked for employee compensation and costs as a percent of total compensation: State and local government workers, by major occupational and industry group, Service Occupations, Salary and Compensation Percent of Total Compensation, retrieved on June 29, 2012 from *http://www.bls.gov/news.release/archives/ecec_09082011.pdf.* $74.41 = $44.42/0.597.

ii. Zero Tolerance of Sexual Abuse; Prevention of Sexual Assault Coordinator, § 115.11

The rule requires immigration detention facilities to have a written zero-tolerance policy for sexual abuse and establish a PSA Compliance Manager at each facility. ICE is not requiring facilities to hire any new staff for these responsibilities; rather ICE believes the necessary PSA Compliance Manager duties can be collateral duties for a current staff member.

For some of the standards in this rulemaking, the actual effort required to comply with the standard will presumably be undertaken by the PSA Compliance Manager. The costs of compliance with those standards are thus essentially subsumed within the cost of this standard. For this reason, and to avoid double counting, many standards are assessed as having minimal to zero cost even though they will require some resources to ensure compliance; this is because the cost of those resources is assigned to this standard to the extent DHS assumes the primary responsibility for complying with the standard will lie with the PSA Compliance Manager. The table below presents the standards and requirements DHS assumes are the responsibility of the PSA Compliance Manager, and are included in the costs estimated for this standard.

TABLE 7—ASSUMED PSA COMPLIANCE MANAGER DUTIES—IMMIGRATION DETENTION FACILITIES

| Standard |
|---|
| 115.11 Zero tolerance of sexual abuse. |
| 115.21 Evidence protocols and forensic medical examinations. |
| 115.31 Staff training. |
| 115.32 Volunteer and contractor training. |
| 115.34 Specialized training: Investigations. |
| 115.63* Reporting to other confinement facilities. |
| 115.65 Coordinated response. |
| 115.67 Agency protection against retaliation. |
| 115.86 Sexual abuse incident reviews. |
| 115.87 Data collection. |

TABLE 7—ASSUMED PSA COMPLIANCE MANAGER DUTIES—IMMIGRATION DETENTION FACILITIES—Continued

| Standard |
|---|
| 115.93* Audits. |

*Indicates new requirement for facilities under 2011 PBNDS or Family Residential Standards.

DHS spoke with some SPCs and CDFs who had Sexual Abuse and Assault Prevention Intervention Coordinators required under the 2008 PBNDS. Based on these discussions, DHS estimates a PSA Compliance Manager will spend, on average, 114 hours in the first year and 78 hours thereafter, which includes writing/revising policies related to sexual abuse and working with auditors. DHS estimates this standard may cost a facility approximately $5,330 (114 hours × $46.75) in the first year.[26]

iii. Limits to Cross-Gender Viewing and Searches, § 115.15

The requirement prohibits cross-gender pat-down searches unless, after reasonable diligence, staff of the same gender is not available at the time the pat-down search is required (for male detainees), or in exigent circumstances (for female and male detainees alike). In addition, it bans cross-gender strip or body cavity searches except in exigent circumstances; requires documentation of all strip and body cavity searches and cross-gender pat-down searches; prohibits physical examinations for the sole purpose of determining genital characteristics; requires training of law enforcement staff on proper procedures for conducting pat-down searches, including transgender and intersex detainees; and, implements policies on staff viewing of showering, performing bodily functions, and changing clothes.

The restrictions placed on cross-gender pat-down searches will be a new requirement for facilities operating under the NDS or 2008 PBNDS, and a modified requirement for facilities operating under the 2011 PBNDS.[27] ICE's detention population is 10 percent female, and 90 percent male. In comparison, 13 percent of correctional officers at Federal confinement facilities[28] and 28 percent at jails are female.[29] Though there may be disproportionate gender ratios of staff to detainees at some individual facilities, the overall national statistics do not indicate that there will be a significant problem with compliance. Facilities are allowed to conduct cross-gender pat-down searches on male detainees when, after reasonable diligence by the facility, a member of the same gender is not available at the time. The pat-down restrictions for female detainees are more stringent. Female detainees only comprise 10 percent of the overall population, and one to five percent are held at ICE's dedicated female facility. The Family Residential Standards, under which the dedicated female facility operates, already prohibit cross-gender pat-downs.

DHS does not expect any facilities to hire new staff or lay off any staff specifically to meet the requirement. Instead, DHS expects that facilities which may have an unbalanced gender ratio take this requirement into consideration during hiring decisions resulting from normal attrition and staff turnover. In the IRFA, DHS requested comments from facilities on this conclusion. No comments were received in response to this request.

DHS includes a cost for facilities to examine their staff rosters, gender ratios, and staffing plans for all shifts for maximum compliance with cross-gender pat downs. The length of time it takes for facilities to adjust staffing plans, strategies, and schedules for gender balance while ensuring there is adequate detainee supervision and monitoring pursuant to § 115.13 will vary with the size of the facility. DHS estimates this may take a supervisor 12 hours initially. DHS anticipates facilities will be able to incorporate these considerations into regular staffing decisions in the future. DHS estimates the restrictions on cross-gender pat-downs may cost a facility approximately $561 (12 hours × $46.75) in the first year.

The requirement for documentation of cross-gender pat-down searches is new for all facilities, regardless of the version of the detention standards under which the facility operates. Presumably, cross-gender pat-down searches of female detainees will occur rarely, as the rule allows them in exigent circumstances only. However, cross-gender pat-down searches of male detainees may happen more frequently. DHS believes this requirement may be a notable burden on facilities both for the process of documenting the pat-down, but also keeping these records administratively. Therefore, as we discuss below, DHS estimates an opportunity cost for this provision. ICE does not currently track the number of cross-gender pat-down searches, or any pat-down searches conducted. In the IRFA DHS requested comment from facilities on the number of cross-gender pat-down searches conducted. No comments were received in response to this request.

Because DHS believes this may be a noticeable burden on facilities, DHS includes a rough estimate using assumptions. DHS also requested comment on these assumptions in the IRFA. No comments were received in response to this request. Detainees may receive a pat-down for a number of reasons. All detainees receive a pat-down upon intake at the facility, detainees may receive a pat-down after visitation, before visiting the attorney room, if visiting medical, if in segregation, etc. Therefore, DHS assumes that in any given day, approximately 50 percent of detainees may receive a pat-down. DHS uses the ratio of male guards to male detainees and female guards to female detainees as a proxy for the percentage of these pat-downs that will be cross-gender, realizing that this may not be representative of every facility, the circumstances at the time a pat-down is required, nor the results after the staff realignment previously discussed. As referenced previously, between 72 and 87 percent of guards are male and 90 percent of detainees are male. Therefore, to estimate a rough order of magnitude, DHS assumes between 3 and 18 percent of pat-downs of male detainees may be cross-gender, with a primary estimate of 10 percent.

DHS finds the total average daily population of male detainees at the 43 facilities classified as small entities and takes the average to determine an average daily population of 93 for a facility classified as a small entity (4,457 × 90% ÷ 43). Then DHS applies the methodology described above to estimate that approximately 2,000 cross gender pat-downs may be conducted at an average small entity annually (93 male ADP × 50% receive pat-down daily × 365 days × 10% cross-gender), which is rounded to the nearest thousand due to uncertainty. DHS estimates it will require an average of five minutes of staff for documentation. DHS estimates

[26] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, NAICS 999300, SOC 33–1011 First Line Supervisors of Correctional Officers Median Hourly Wage, retrieved on June 29, 2012 from *http://www.bls.gov/oes/2011/may/oes331011.htm*. Loaded for benefits. $46.75 = $27.91/0.597

[27] Specifically, the 2011 PBNDS permits cross-gender pat-down searches of women when staff of the same gender is not available at the time the pat-down search is required. Under the proposed standard, cross-gender searches of females would be allowed only in exigent circumstances.

[28] Bureau of Justice Statistics, Census of State and Federal Correctional Facilities, 2005, page 4, retrieved on August 13, 2012 from *http://www.bjs.gov/content/pub/pdf/csfcf05.pdf*.

[29] Department of Justice, Final Regulatory Impact Analysis, section 5.6.15.1 Analysis and Methodology for Adult Facilities of standards 115.15, retrieved May 24 from *www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf*.

this standard may cost a facility approximately $5,435 (5 minutes × $32.61 per hour), annually.

The total estimate per small entity for § 115.15 is $5,996 ($561 for staff realignment + $5,435 for cross-gender pat-down documentation).

iv. Evidence Protocols and Forensic Medical Examinations, § 115.21

The rule requires ICE and any of its immigration detention facilities to establish a protocol for the investigation of allegations of sexual abuse or the referral of allegations to investigators. In addition, where appropriate, at no cost to the detainee, a forensic medical exam should be offered and an outside victim advocate shall be made available for support if requested.

DHS includes a cost for facilities to enter into a memorandum of understanding (MOU) with entities that provide victim advocate services, such as rape crisis centers. DHS estimates it will require approximately 20 hours of staff time to negotiate and settle on each MOU. DHS estimates this standard may cost a facility approximately $1,488 (20 hours × $74.41).

v. Staff Training, § 115.31

Under § 115.31 the rule requires that any facility staff who may have contact with immigration detention facilities have training on specific items related to prevention, detection, and response to sexual abuse. It also requires facilities to maintain documentation that all staff have completed the training requirements. Staff includes any employees or contractors of the agency or facility, including any entity that operates within the facility. Contractor means a person who or entity that provides services on a recurring basis pursuant to a contractual agreement with the agency or facility.

DHS uses the National Institute of Corrections Information Center 2-hour training timeframe as an approximation for the length of the training course to fulfill the proposed requirements. DHS estimates this standard may cost a facility approximately $18,914 (2 hours × 290 staff × $32.61), annually.[30] [31]

vi. Other Training, § 115.32

In the NPRM, § 115.32 required that any volunteers and contractors who may have contact with immigration detention facilities also receive training on specific items related to prevention, detection, and response to sexual abuse. In the final rule this was changed to volunteers and other contractors. Other contractors are those that do not have training requirements under § 115.31, but who have contact with detainees and provide services on a non-recurring basis to the facility pursuant to a contractual agreement. The standard also requires the agency or facility to maintain documentation that all volunteers and other contractors have completed the training requirements.

The provisions in this standard allow the level and type of training required of volunteers and other contractors to be based upon the services they provide and the level of contact they have with detainees, but sets a minimum level requiring notification of the zero-tolerance policy and reporting responsibilities and procedures. Because of the regular nature of volunteers and the types of duties they perform, DHS uses the same assumptions as staff for the frequency and hours of training required of volunteers. DHS estimates this standard for volunteers may cost approximately $2,008 per facility (2 hours × 30 volunteers × $33.47).[32] [33]

To provide flexibility to facilities to determine the appropriate level of training necessary, the NPRM included training for contractors under § 115.31 and § 115.32 recognizing there are different types of contractors ranging from guards to those that come weekly to service vending machines. In this final rule, DHS proposes to address this flexibility in a different manner. DHS has removed from § 115.32 contractors, as defined under § 115.5 as a ''person or entity that provides services on a recurring basis pursuant to a contractual agreement with the agency or facility.'' The final rule includes these types of recurring contractors solely under the training requirements of § 115.31. In recognition that there may be other non-recurring contractors with access to detainees, DHS has included a requirement for these other contractors to also undergo training appropriate for the services they provide and level of contact they have with detainees, under § 115.32. This expands the training requirements to a population that was not previously covered under the NPRM. DHS estimates this standard for other contractors may cost approximately $121 per facility (15 minutes × 20 other contractors × $24.24).[34]

The total estimated cost per facility for volunteer and other contractor training is $2,129 ($2,008 for volunteers + $121 for other contractors).

vii. Specialized Training: Investigations, §§ 115.34, 115.134

The rule requires the agency or facility to provide specialized training on sexual abuse and effective cross-agency coordination to agency or facility investigators, respectively, who conduct investigations into alleged sexual abuse at immigration detention facilities.

DHS conducts investigations of all allegations of detainee sexual abuse in detention facilities. The 2012 ICE SAAPID mandates that ICE's OPR provide specialized training to OPR investigators and other ICE staff. Facilities may also conduct their own investigations. However, because ICE conducts investigations into the allegations, training for facility investigators will likely be less specialized than required of ICE investigators. DHS includes a cost for the time required for training investigators. DHS estimates the training may take approximately one hour. DHS estimates this standard may cost a facility approximately $468 (1 hour × 10 investigators × $46.75).[35] [36]

[30] ICE does not keep record of the number of staff at contract facilities. The estimates represent the results from a small sample, stratified by facility type. ICE estimates approximately 290 staff per facility.

[31] Though there may be other types of staff that will require this training, such as medical practitioners or administrative staff, DHS assumes correctional officers and their supervisors comprise the majority of staff with detainee contact.

[32] ICE does not keep record of the number of volunteers at contract facilities. The estimates represent the results from a small sample, stratified by facility type. ICE estimates approximately 30 volunteers per facility.

[33] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, SOC 00–0000 All Occupations Median Hourly Wage, retrieved on August 16, 2012 from *http://www.bls.gov/oes/2011/may/naics4_999300.htm*. Loaded for benefits. $33.47 = $19.98/0.597.

[34] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, National, Weighted Average Median Wage Rate for SOC 37–0000 Building Grounds Cleaning and Maintenance Occupations; 47–0000 Construction and Extraction Occupations; and 49–0000 Installation, Maintenance, and Repair Occupations, retrieved on June 13 2012 from *http://www.bls.gov/oes/2011/may/oes_nat.htm*. Loaded for benefits.

Bureau of Labor Statistics, Employer Cost for Employee Compensation, June 2011, Table 1: Employer Costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, Management, professional, and related, Salary and Compensation Percent of Total Compensation, retrieved on October 15, 2012 from *http://www.bls.gov/news.release/archives/ecec_09082011.pdf*. $24.24 = $16.86/0.694.

[35] ICE does not keep record of the number of investigators at contract facilities. The estimates represent the results from a small sample, stratified by facility type. ICE estimates 10 investigators per facility.

[36] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, NAICS 99300, Median Wage Rate for SOC 33–1011 First-Line Supervisors of Correctional Officers, retrieved on August 16, 2012 from *http://www.bls.gov/oes/2011/may/naics4_999300.htm*. Loaded for benefits. $46.75 = $27.91/0.597.

viii. Specialized Training: Medical and Mental Health Care, § 115.35

The rule requires specialized training to DHS medical and mental health care staff. In addition, it requires all facilities to have policies and procedures to ensure that the facility trains or certifies all full- or part-time facility medical and mental health care staff in procedures for treating victims of sexual abuse, in facilities where medical or mental health staff may be assigned these activities.[37]

DHS searched for continuing medical education courses that focused on the evaluation and treatment for victims of sexual assault. Based on the results, DHS estimates an average course will be one hour in length and cost between $10 and $15, and can be completed online. DHS estimates this standard may cost a facility approximately $1,957 (30 medical and mental health care practitioners × ($50.23 × 1 hr + $15)).[38]

ix. Detainee Access to Outside Confidential Support Services, § 115.53

The rule requires facilities to maintain or attempt to enter into MOUs with organizations that provide legal advocacy and confidential emotional support services for victims of sexual abuse. It also requires notices of these services be made available to detainees, as appropriate.

DHS includes a cost for facilities to enter into a MOU with entities that provide legal advocacy and confidential support services, such as services provided by a rape crisis center. DHS estimates it will require approximately 20 hours of staff time to negotiate and settle on each MOU. DHS estimates this standard may cost a facility approximately $1,488 (20 hours × $74.41).

x. Audits, § 115.93

Facilities may also incur costs for re-audits. Re-audits can be requested in the event that the facility does not achieve compliance with each standard or if the facility files an appeal with the agency regarding any specific finding that it believes to be incorrect. Costs for these audits will be borne by the facility; however, the request for these re-audits is at the discretion of the facility.

xi. Additional Implementation Costs

Facilities contracting with DHS agencies may incur organizational costs related to proper planning and overall execution of the rulemaking, in addition to the specific implementation costs facilities are estimated to incur for each of the requirements. The burden resulting from the time required to read the rulemaking, research how it might impact facility operations, procedures, and budget, as well as consideration of how best to execute the rulemaking requirements or other costs of overall execution. This is exclusive of the time required under § 115.12 to determine and agree upon the new terms of the contract and the specific requirements expected to be performed by the facility PSA Compliance Manager under § 115.11.

To account for these costs, DHS adds an additional category of implementation costs for immigration detention facilities. Implementation costs will vary by the size of the facility, a facility's current practices, and other facility-specific factors. DHS assumes the costs any additional implementation costs might occur as a result of the standards with start-up costs, such as entering into MOUs, rather than standards with action or on-going costs, such as training. DHS estimates additional implementation costs as 10 percent of the total costs of standards with a start-up cost. DHS requests comment on this assumption. The tables below present the estimates for additional implementation costs. DHS estimates this standard may cost a facility approximately $1,579 in the first year (10% × ($1,488 for § 115.12 + $5,330 for § 115.11 + $5,996 for § 115.15 + $1,488 for § 115.21 + $1,488 for § 115.53)).

xii. Total Cost per Facility

DHS estimates the total cost per immigration detention facility under the NDS for compliance with the standards is approximately $40,837 for the first year. In subsequent years, DHS estimates the costs drop to approximately $31,033. The following table summarizes the preceding discussion.

TABLE 8—ESTIMATED COST PER SMALL ENTITY UNDER NDS—IMMIGRATION DETENTION FACILITIES

| Standard | Cost in year 1 | On-going cost |
|---|---|---|
| 115.12 Consulting with non-DHS entities for the confinement of detainees | $1,488 | $0 |
| 115.11 Zero tolerance of sexual abuse; PSA Coordinator * | 5,330 | 3,647 |
| 115.15 Limits to cross-gender viewing and searches * | 5,996 | 5,435 |
| 115.21 Evidence protocols and forensic medical examinations | 1,488 | 0 |
| 115.31 Staff training * | 18,914 | 18,914 |
| 115.327 Other training * | 2,129 | 2,129 |
| 115.34 Specialized training: Investigations | 468 | 0 |
| 115.35 Specialized training: Medical and mental health care | 1,957 | 0 |
| 115.53 Detainee access to outside confidential support Services | 1,488 | 0 |
| Additional Implementation Costs* | 1,579 | 908 |
| Total | 40,837 | 31,033 |

* Standards for which DHS estimates there may be on-going costs.

[37] ICE does not keep record of the number of medical and mental health care providers at contract facilities. The estimates represent the results from a small sample, stratified by facility type. ICE estimates 30 medical and mental health care providers per new facility.

[38] Bureau of Labor Statistics, Occupational Employment Statistics (OES), May 2011, NAICS 99300, Weighted Average Median Wage Rate for SOC 29–1062 Family and General Practitioners; 29–1066 Psychiatrists; 29–1071 Physician Assistants; 29–1111 Registered Nurses; 29–2053 Psychiatric Technicians; and 29–2061 Licensed Practical and Licensed Vocational Nurses, retrieved on August 16, 2012 from *http://www.bls.gov/oes/2011/may/naics4_999300.htm*. Loaded for benefits. $50.23 = $29.99/0.597

6. A Description of the Steps the Agency Has Taken to Minimize Any Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including A Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule, and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affected the Impact on Small Entities Was Rejected

DHS considered a longer phase-in period for small entities subject to the rulemaking. A longer period would reduce immediate burden on small entities with current contracts. The current requirements require that facilities comply with the standards upon renewal of a contract or exercising a contract option. Essentially, this would phase-in all authorized immigration detention facilities within a year of the effective date of the final rule. DHS is willing to work with small facilities upon contract renewal in implementing these standards.

DHS also considered requiring lesser standards, such as those under the NDS or the 2008 PBNDS for small entities. However, DHS rejected this alternative because DHS believes in the importance of protecting detainees from, and providing treatment after, instances of sexual abuse, regardless of a facility's size. In the IRFA DHS requested comment on additional alternatives that might help reduce the impact on small entities. No comments were received in response to this request.

*G. Paperwork Reduction Act*

DHS is setting standards for the prevention, detection, and response to sexual abuse in its confinement facilities. For DHS facilities and as incorporated in DHS contracts, these standards require covered facilities to retain and report to the agency certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect, retain, and report to the agency certain specified information relating to allegations of sexual abuse within the covered facility. As stated in the NPRM, DHS believes that most of the information collection requirements placed on facilities are already requirements derived from existing contracts with immigration detention facilities. However, DHS included these requirements as part of an information collection request associated with the proposed rule, pursuant to the Paperwork Reduction Act of 1995 (PRA), so as to ensure clarity of requirements associated with this rulemaking.

This final rule contains a new collection of information covered by the PRA. The information collection described by DHS in the proposed rule garnered no comments from the public, and thus no changes were necessitated based upon any comments pertaining to the PRA aspects of the rule. However, changes to the PREA standards made in response to substantive comments on the NPRM and due to additional analysis resulted in the total PRA burden hours being greater than those estimated in DHS's initial information collection request.

DHS has submitted a revised information collection request to OMB for review and clearance in accordance with the review procedures of the PRA.

**List of Subjects in 6 CFR Part 115**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Part 115 of Title 6 of the Code of Federal Regulations is added to read as follows:

## PART 115—SEXUAL ABUSE AND ASSAULT PREVENTION STANDARDS

Sec.
115.5 General definitions.
115.6 Definitions related to sexual abuse and assault.

**Subpart A—Standards for Immigration Detention Facilities**

**Coverage**

115.10 Coverage of DHS immigration detention facilities.

**Prevention Planning**

115.11 Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.
115.12 Contracting with non-DHS entities for the confinement of detainees.
115.13 Detainee supervision and monitoring.
115.14 Juvenile and family detainees.
115.15 Limits to cross-gender viewing and searches.
115.16 Accommodating detainees with disabilities and detainees who are limited English proficient.
115.17 Hiring and promotion decisions.
115.18 Upgrades to facilities and technologies.

**Responsive Planning**

115.21 Evidence protocols and forensic medical examinations.
115.22 Policies to ensure investigation of allegations and appropriate agency oversight.

**Training and Education**

115.31 Staff training.
115.32 Other training.
115.33 Detainee education.
115.34 Specialized training: Investigations.
115.35 Specialized training: Medical and mental health care.

**Assessment for Risk of Sexual Victimization and Abusiveness**

115.41 Assessment for risk of victimization and abusiveness.
115.42 Use of assessment information.
115.43 Protective custody.

**Reporting**

115.51 Detainee reporting.
115.52 Grievances.
115.53 Detainee access to outside confidential support services.
115.54 Third-party reporting.

**Official Response Following a Detainee Report**

115.61 Staff reporting duties.
115.62 Protection duties.
115.63 Reporting to other confinement facilities.
115.64 Responder duties.
115.65 Coordinated response.
115.66 Protection of detainees from contact with alleged abusers.
115.67 Agency protection against retaliation.
115.68 Post-allegation protective custody.

**Investigations**

115.71 Criminal and administrative investigations.
115.72 Evidentiary standard for administrative investigations.
115.73 Reporting to detainees.

**Discipline**

115.76 Disciplinary sanctions for staff.
115.77 Corrective action for contractors and volunteers.
115.78 Disciplinary sanctions for detainees.

**Medical and Mental Care**

115.81 Medical and mental health assessments; history of sexual abuse.
115.82 Access to emergency medical and mental health services.
115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

**Data Collection and Review**

115.86 Sexual abuse incident reviews.
115.87 Data collection.
115.88 Data review for corrective action.
115.89 Data storage, publication, and destruction.

**Audits and Compliance**

115.93 Audits of standards.

**Additional Provisions in Agency Policies**

115.95 Additional provisions in agency policies.

**Subpart B—Standards for DHS Holding Facilities**

**Coverage**

115.110 Coverage of DHS holding facilities.

**Prevention Planning**

115.111 Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.
115.112 Contracting with non-DHS entities for the confinement of detainees.
115.113 Detainee supervision and monitoring.
115.114 Juvenile and family detainees.
115.115 Limits to cross-gender viewing and searches.
115.116 Accommodating detainees with disabilities and detainees who are limited English proficient.
115.117 Hiring and promotion decisions.
115.118 Upgrades to facilities and technologies.

**Responsive Planning**

115.121 Evidence protocols and forensic medical examinations.
115.122 Policies to ensure investigation of allegations and appropriate agency oversight.

**Training and Education**

115.131 Employee, contractor, and volunteer training.
115.132 Notification to detainees of the agency's zero-tolerance policy.
115.133 [Reserved]
115.134 Specialized training: Investigations.

**Assessment for Risk of Sexual Victimization and Abusiveness**

115.141 Assessment for risk of victimization and abusiveness.

**Reporting**

115.151 Detainee reporting.
115.152–115.153 [Reserved]
115.154 Third-party reporting.

**Official Response Following a Detainee Report**

115.161 Staff reporting duties.
115.162 Agency protection duties.
115.163 Reporting to other confinement facilities.
115.164 Responder duties.
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**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, et seq.); 8 CFR part 2.

### § 115.5 General definitions.

For purposes of this part, the term—

*Agency* means the unit or component of DHS responsible for operating or supervising any facility, or part of a facility, that confines detainees.

*Agency head* means the principal official of an agency.

*Contractor* means a person who or entity that provides services on a recurring basis pursuant to a contractual agreement with the agency or facility.

*Detainee* means any person detained in an immigration detention facility or holding facility.

*Employee* means a person who works directly for the agency.

*Exigent circumstances* means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility or a threat to the safety or security of any person.

*Facility* means a place, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that was built or retrofitted for the purpose of detaining individuals and is routinely used by the agency to detain individuals in its custody. References to requirements placed on facilities extend to the entity responsible for the direct operation of the facility.

*Facility head* means the principal official responsible for a facility.

*Family unit* means a group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence.

*Gender nonconforming* means having an appearance or manner that does not conform to traditional societal gender expectations.

*Holding facility* means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

(1) Under the control of the agency; and

(2) Primarily used for the short-term confinement of individuals who have recently been detained, or are being transferred to or from a court, jail, prison, other agency, or other unit of the facility or agency.

*Immigration detention facility* means a confinement facility operated by or pursuant to contract with U.S. Immigration and Customs Enforcement (ICE) that routinely holds persons for over 24 hours pending resolution or completion of immigration removal operations or processes, including facilities that are operated by ICE, facilities that provide detention services under a contract awarded by ICE, and facilities used by ICE pursuant to an Intergovernmental Service Agreement.

*Intersex* means having sexual or reproductive anatomy or chromosomal pattern that does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

*Juvenile* means any person under the age of 18.

*Law enforcement staff* means officers or agents of the agency or facility that are responsible for the supervision and control of detainees in a holding facility.

*Medical practitioner* means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified medical practitioner'' refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Mental health practitioner* means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified mental health practitioner'' refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Pat-down search* means a sliding or patting of the hands over the clothed body of a detainee by staff to determine whether the individual possesses contraband.

*Security staff* means employees primarily responsible for the supervision and control of detainees in housing units, recreational areas, dining

areas, and other program areas of an immigration detention facility.

*Staff* means employees or contractors of the agency or facility, including any entity that operates within the facility.

*Strip search* means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

*Substantiated allegation* means an allegation that was investigated and determined to have occurred.

*Transgender* means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

*Unfounded allegation* means an allegation that was investigated and determined not to have occurred.

*Unsubstantiated allegation* means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

*Volunteer* means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency or facility.

**§ 115.6 Definitions related to sexual abuse and assault.**

For purposes of this part, the term—

*Sexual abuse* includes—

(1) Sexual abuse and assault of a detainee by another detainee; and

(2) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

*Sexual abuse of a detainee by another detainee* includes any of the following acts by one or more detainees, prisoners, inmates, or residents of the facility in which the detainee is housed who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

(1) Contact between the penis and the vulva or anus and, for purposes of this paragraph (1), contact involving the penis upon penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;

(4) Touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or

(5) Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.

*Sexual abuse of a detainee by a staff member, contractor, or volunteer* includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee, engages in or attempts to engage in:

(1) Contact between the penis and the vulva or anus and, for purposes of this paragraph (1), contact involving the penis upon penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;

(6) Repeated verbal statements or comments of a sexual nature to a detainee;

(7) Any display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, or

(8) Voyeurism, which is defined as the inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

## Subpart A—Standards for Immigration Detention Facilities Coverage

**§ 115.10 Coverage of DHS immigration detention facilities.**

This subpart covers ICE immigration detention facilities. Standards set forth in this subpart A are not applicable to Department of Homeland Security (DHS) holding facilities.

### Prevention Planning

**§ 115.11 Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.**

(a) The agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) The agency shall employ or designate an upper-level, agency-wide Prevention of Sexual Assault Coordinator (PSA Coordinator) with sufficient time and authority to develop, implement, and oversee agency efforts to comply with these standards in all of its immigration detention facilities.

(c) Each facility shall have a written policy mandating zero tolerance toward all forms of sexual abuse and outlining the facility's approach to preventing, detecting, and responding to such conduct. The agency shall review and approve each facility's written policy.

(d) Each facility shall employ or designate a Prevention of Sexual Assault Compliance Manager (PSA Compliance Manager) who shall serve as the facility point of contact for the agency PSA Coordinator and who has sufficient time and authority to oversee facility efforts to comply with facility sexual abuse prevention and intervention policies and procedures.

**§ 115.12 Contracting with non-DHS entities for the confinement of detainees.**

(a) When contracting for the confinement of detainees in immigration detention facilities operated by non-DHS private or public agencies or other entities, including other government agencies, the agency shall include in any new contracts, contract renewals, or substantive contract modifications the entity's obligation to adopt and comply with these standards.

(b) Any new contracts, contract renewals, or substantive contract modifications shall provide for agency contract monitoring to ensure that the contractor is complying with these standards.

**§ 115.13 Detainee supervision and monitoring.**

(a) Each facility shall ensure that it maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse.

(b) Each facility shall develop and document comprehensive detainee supervision guidelines to determine and meet the facility's detainee supervision needs, and shall review those guidelines at least annually.

(c) In determining adequate levels of detainee supervision and determining the need for video monitoring, the facility shall take into consideration generally accepted detention and correctional practices, any judicial findings of inadequacy, the physical layout of each facility, the composition of the detainee population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse, the findings and recommendations of sexual abuse incident review reports, and any other relevant factors, including but not limited to the length of time detainees spend in agency custody.

(d) Each facility shall conduct frequent unannounced security inspections to identify and deter sexual abuse of detainees. Such inspections shall be implemented for night as well as day shifts. Each facility shall prohibit staff from alerting others that these security inspections are occurring, unless such announcement is related to the legitimate operational functions of the facility.

**§ 115.14 Juvenile and family detainees.**

(a) Juveniles shall be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as with any other laws, regulations, or legal requirements.

(b) The facility shall hold juveniles apart from adult detainees, minimizing sight, sound, and physical contact, unless the juvenile is in the presence of an adult member of the family unit, and provided there are no safety or security concerns with the arrangement.

(c) In determining the existence of a family unit for detention purposes, the agency shall seek to obtain reliable evidence of a family relationship.

(d) The agency and facility shall provide priority attention to unaccompanied alien children as defined by 6 U.S.C. 279(g)(2), including transfer to a Department of Health and Human Services Office of Refugee Resettlement facility within 72 hours, except in exceptional circumstances, in accordance with 8 U.S.C. 1232(b)(3).

(e) If a juvenile who is an unaccompanied alien child has been convicted as an adult of a crime related to sexual abuse, the agency shall provide the facility and the Department of Health and Human Services Office of Refugee Resettlement with the releasable information regarding the conviction(s) to ensure the appropriate placement of the alien in a Department of Health and Human Services Office of Refugee Resettlement facility.

**§ 115.15 Limits to cross-gender viewing and searches.**

(a) Searches may be necessary to ensure the safety of officers, civilians and detainees; to detect and secure evidence of criminal activity; and to promote security, safety, and related interests at immigration detention facilities.

(b) Cross-gender pat-down searches of male detainees shall not be conducted unless, after reasonable diligence, staff of the same gender is not available at the time the pat-down search is required or in exigent circumstances.

(c) Cross-gender pat-down searches of female detainees shall not be conducted unless in exigent circumstances.

(d) All cross-gender pat-down searches shall be documented.

(e) Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners. Facility staff shall not conduct visual body cavity searches of juveniles and, instead, shall refer all such body cavity searches of juveniles to a medical practitioner.

(f) All strip searches and visual body cavity searches shall be documented.

(g) Each facility shall implement policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

(h) The facility shall permit detainees in Family Residential Facilities to shower, perform bodily functions, and change clothing without being viewed by staff, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement.

(i) The facility shall not search or physically examine a detainee for the sole purpose of determining the detainee's genital characteristics. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records, or, if necessary, learning that information as part of a standard medical examination that all detainees must undergo as part of intake or other processing procedure conducted in private, by a medical practitioner.

(j) The agency shall train security staff in proper procedures for conducting pat-down searches, including cross-gender pat-down searches and searches of transgender and intersex detainees. All pat-down searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and agency policy, including consideration of officer safety.

**§ 115.16 Accommodating detainees with disabilities and detainees who are limited English proficient.**

(a) The agency and each facility shall take appropriate steps to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the agency's and facility's efforts to prevent, detect, and respond to sexual abuse. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency and facility shall ensure that any written materials related to sexual abuse are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency or facility is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

(b) The agency and each facility shall take steps to ensure meaningful access to all aspects of the agency's and facility's efforts to prevent, detect, and respond to sexual abuse to detainees who are limited English proficient, including steps to provide in-person or telephonic interpretive services that enable effective, accurate, and impartial

interpretation, both receptively and expressively, using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse, the agency and each facility shall provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and the agency determines that such interpretation is appropriate and consistent with DHS policy. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse.

**§ 115.17 Hiring and promotion decisions.**

(a) An agency or facility shall not hire or promote anyone who may have contact with detainees, and shall not enlist the services of any contractor or volunteer who may have contact with detainees, who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) An agency or facility considering hiring or promoting staff shall ask all applicants who may have contact with detainees directly about previous misconduct described in paragraph (a) of this section, in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. Agencies and facilities shall also impose upon employees a continuing affirmative duty to disclose any such misconduct. The agency, consistent with law, shall make its best efforts to contact all prior institutional employers of an applicant for employment, to obtain information on substantiated allegations of sexual abuse or any resignation during a pending investigation of alleged sexual abuse.

(c) Before hiring new staff who may have contact with detainees, the agency or facility shall conduct a background investigation to determine whether the candidate for hire is suitable for employment with the facility or agency, including a criminal background records check. Upon request by the agency, the facility shall submit for the agency's approval written documentation showing the detailed elements of the facility's background check for each staff member and the facility's conclusions. The agency shall conduct an updated background investigation every five years for agency employees who may have contact with detainees. The facility shall require an updated background investigation every five years for those facility staff who may have contact with detainees and who work in immigration-only detention facilities.

(d) The agency or facility shall also perform a background investigation before enlisting the services of any contractor who may have contact with detainees. Upon request by the agency, the facility shall submit for the agency's approval written documentation showing the detailed elements of the facility's background check for each contractor and the facility's conclusions.

(e) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination or withdrawal of an offer of employment, as appropriate.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

(g) In the event the agency contracts with a facility for the confinement of detainees, the requirements of this section otherwise applicable to the agency also apply to the facility and its staff.

**§ 115.18 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the facility or agency, as appropriate, shall consider the effect of the design, acquisition, expansion, or modification upon their ability to protect detainees from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in an immigration detention facility, the facility or agency, as appropriate, shall consider how such technology may enhance their ability to protect detainees from sexual abuse.

**Responsive Planning**

**§ 115.21 Evidence protocols and forensic medical examinations.**

(a) To the extent that the agency or facility is responsible for investigating allegations of sexual abuse involving detainees, it shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The protocol shall be developed in coordination with DHS and shall be developmentally appropriate for juveniles, where applicable.

(b) The agency and each facility developing an evidence protocol referred to in paragraph (a) of this section, shall consider how best to utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs. Each facility shall establish procedures to make available, to the full extent possible, outside victim services following incidents of sexual abuse; the facility shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall provide these services by making available a qualified staff member from a community-based organization, or a qualified agency staff member. A qualified agency staff member or a qualified community-based staff member means an individual who has received education concerning sexual assault and forensic examination issues in general. The outside or internal victim advocate shall provide emotional support, crisis intervention, information, and referrals.

(c) Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the facility shall arrange for an alleged victim detainee to undergo a forensic medical examination by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel.

(d) As requested by a victim, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered by a hospital conducting a forensic exam, shall be allowed for support during a forensic exam and investigatory interviews.

(e) To the extent that the agency is not responsible for investigating allegations of sexual abuse, the agency or the facility shall request that the investigating agency follow the requirements of paragraphs (a) through (d) of this section.

**§ 115.22 Policies to ensure investigation of allegations and appropriate agency oversight.**

(a) The agency shall establish an agency protocol, and shall require each facility to establish a facility protocol, to ensure that each allegation of sexual abuse is investigated by the agency or facility, or referred to an appropriate investigative authority. The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse.

(b) The agency shall ensure that the agency and facility protocols required by paragraph (a) of this section, include a description of responsibilities of the agency, the facility, and any other investigating entities; and require the documentation and maintenance, for at least five years, of all reports and referrals of allegations of sexual abuse.

(c) The agency shall post its protocols on its Web site; each facility shall also post its protocols on its Web site, if it has one, or otherwise make the protocol available to the public.

(d) Each facility protocol shall ensure that all allegations are promptly reported to the agency as described in paragraphs (e) and (f) of this section, and, unless the allegation does not involve potentially criminal behavior, are promptly referred for investigation to an appropriate law enforcement agency with the legal authority to conduct criminal investigations. A facility may separately, and in addition to the above reports and referrals, conduct its own investigation.

(e) When a detainee, prisoner, inmate, or resident of the facility in which an alleged detainee victim is housed is alleged to be the perpetrator of detainee sexual abuse, the facility shall ensure that the incident is promptly reported to the Joint Intake Center, the ICE Office of Professional Responsibility or the DHS Office of Inspector General, as well as the appropriate ICE Field Office Director, and, if it is potentially criminal, referred to an appropriate law enforcement agency having jurisdiction for investigation.

(f) When a staff member, contractor, or volunteer is alleged to be the perpetrator of detainee sexual abuse, the facility shall ensure that the incident is promptly reported to the Joint Intake Center, the ICE Office of Professional Responsibility or the DHS Office of Inspector General, as well as to the appropriate ICE Field Office Director, and to the local government entity or contractor that owns or operates the facility. If the incident is potentially criminal, the facility shall ensure that it is promptly referred to an appropriate law enforcement agency having jurisdiction for investigation.

(g) The agency shall ensure that all allegations of detainee sexual abuse are promptly reported to the PSA Coordinator and to the appropriate offices within the agency and within DHS to ensure appropriate oversight of the investigation.

(h) The agency shall ensure that any alleged detainee victim of sexual abuse that is criminal in nature is provided timely access to U nonimmigrant status information.

## Training and Education

**§ 115.31 Staff training.**

(a) The agency shall train, or require the training of, all employees who may have contact with immigration detainees, and all facility staff, to be able to fulfill their responsibilities under this part, including training on:

(1) The agency's and the facility's zero-tolerance policies for all forms of sexual abuse;

(2) The right of detainees and staff to be free from sexual abuse, and from retaliation for reporting sexual abuse;

(3) Definitions and examples of prohibited and illegal sexual behavior;

(4) Recognition of situations where sexual abuse may occur;

(5) Recognition of physical, behavioral, and emotional signs of sexual abuse, and methods of preventing and responding to such occurrences;

(6) How to avoid inappropriate relationships with detainees;

(7) How to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees;

(8) Procedures for reporting knowledge or suspicion of sexual abuse; and

(9) The requirement to limit reporting of sexual abuse to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes.

(b) All current facility staff, and all agency employees who may have contact with immigration detention facility detainees, shall be trained within one year of May 6, 2014, and the agency or facility shall provide refresher information every two years.

(c) The agency and each facility shall document that staff that may have contact with immigration facility detainees have completed the training.

**§ 115.32 Other training.**

(a) The facility shall ensure that all volunteers and other contractors (as defined in paragraph (d) of this section) who have contact with detainees have been trained on their responsibilities under the agency's and the facility's sexual abuse prevention, detection, intervention and response policies and procedures.

(b) The level and type of training provided to volunteers and other contractors shall be based on the services they provide and level of contact they have with detainees, but all volunteers and other contractors who have contact with detainees shall be notified of the agency's and the facility's zero-tolerance policies regarding sexual abuse and informed how to report such incidents.

(c) Each facility shall receive and maintain written confirmation that volunteers and other contractors who have contact with immigration facility detainees have completed the training.

(d) In this section, the term *other contractor* means a person who provides services on a non-recurring basis to the facility pursuant to a contractual agreement with the agency or facility.

**§ 115.33 Detainee education.**

(a) During the intake process, each facility shall ensure that the detainee orientation program notifies and informs detainees about the agency's and the facility's zero-tolerance policies for all forms of sexual abuse and includes (at a minimum) instruction on:

(1) Prevention and intervention strategies;

(2) Definitions and examples of detainee-on-detainee sexual abuse, staff-on-detainee sexual abuse and coercive sexual activity;

(3) Explanation of methods for reporting sexual abuse, including to any staff member, including a staff member other than an immediate point-of-contact line officer (e.g., the compliance manager or a mental health specialist), the DHS Office of Inspector General, and the Joint Intake Center;

(4) Information about self-protection and indicators of sexual abuse;

(5) Prohibition against retaliation, including an explanation that reporting sexual abuse shall not negatively impact the detainee's immigration proceedings; and

(6) The right of a detainee who has been subjected to sexual abuse to receive treatment and counseling.

(b) Each facility shall provide the detainee notification, orientation, and instruction in formats accessible to all detainees, including those who are limited English proficient, deaf, visually impaired or otherwise disabled, as well as to detainees who have limited reading skills.

(c) The facility shall maintain documentation of detainee participation in the intake process orientation.

(d) Each facility shall post on all housing unit bulletin boards the following notices:

(1) The DHS-prescribed sexual assault awareness notice;

(2) The name of the Prevention of Sexual Abuse Compliance Manager; and

(3) The name of local organizations that can assist detainees who have been victims of sexual abuse.

(e) The facility shall make available and distribute the DHS-prescribed ''Sexual Assault Awareness Information'' pamphlet.

(f) Information about reporting sexual abuse shall be included in the agency Detainee Handbook made available to all immigration detention facility detainees.

**§ 115.34 Specialized training: Investigations.**

(a) In addition to the general training provided to all facility staff and employees pursuant to § 115.31, the agency or facility shall provide specialized training on sexual abuse and effective cross-agency coordination to agency or facility investigators, respectively, who conduct investigations into allegations of sexual abuse at immigration detention facilities. All investigations into alleged sexual abuse must be conducted by qualified investigators.

(b) The agency and facility must maintain written documentation verifying specialized training provided to investigators pursuant to this section.

**§ 115.35 Specialized training: Medical and mental health care.**

(a) The agency shall provide specialized training to DHS or agency employees who serve as full- and part-time medical practitioners or full- and part-time mental health practitioners in immigration detention facilities where medical and mental health care is provided.

(b) The training required by this section shall cover, at a minimum, the following topics:

(1) How to detect and assess signs of sexual abuse;

(2) How to respond effectively and professionally to victims of sexual abuse,

(3) How and to whom to report allegations or suspicions of sexual abuse, and

(4) How to preserve physical evidence of sexual abuse. If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall review and approve the facility's policy and procedures to ensure that facility medical staff is trained in procedures for examining and treating victims of sexual abuse, in facilities where medical staff may be assigned these activities.

## Assessment for Risk of Sexual Victimization and Abusiveness

**§ 115.41 Assessment for risk of victimization and abusiveness.**

(a) The facility shall assess all detainees on intake to identify those likely to be sexual aggressors or sexual abuse victims and shall house detainees to prevent sexual abuse, taking necessary steps to mitigate any such danger. Each new arrival shall be kept separate from the general population until he/she is classified and may be housed accordingly.

(b) The initial classification process and initial housing assignment should be completed within twelve hours of admission to the facility.

(c) The facility shall also consider, to the extent that the information is available, the following criteria to assess detainees for risk of sexual victimization:

(1) Whether the detainee has a mental, physical, or developmental disability;

(2) The age of the detainee;

(3) The physical build and appearance of the detainee;

(4) Whether the detainee has previously been incarcerated or detained;

(5) The nature of the detainee's criminal history;

(6) Whether the detainee has any convictions for sex offenses against an adult or child;

(7) Whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the detainee has self-identified as having previously experienced sexual victimization; and

(9) The detainee's own concerns about his or her physical safety.

(d) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the facility, in assessing detainees for risk of being sexually abusive.

(e) The facility shall reassess each detainee's risk of victimization or abusiveness between 60 and 90 days from the date of initial assessment, and at any other time when warranted based upon the receipt of additional, relevant information or following an incident of abuse or victimization.

(f) Detainees shall not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (c)(1), (c)(7), (c)(8), or (c)(9) of this section.

(g) The facility shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the detainee's detriment by staff or other detainees or inmates.

**§ 115.42 Use of assessment information.**

(a) The facility shall use the information from the risk assessment under § 115.41 of this part to inform assignment of detainees to housing, recreation and other activities, and voluntary work. The agency shall make individualized determinations about how to ensure the safety of each detainee.

(b) When making assessment and housing decisions for a transgender or intersex detainee, the facility shall consider the detainee's gender self-identification and an assessment of the effects of placement on the detainee's health and safety. The facility shall consult a medical or mental health professional as soon as practicable on this assessment. The facility should not base placement decisions of transgender or intersex detainees solely on the identity documents or physical anatomy of the detainee; a detainee's self-identification of his/her gender and self-assessment of safety needs shall always be taken into consideration as well. The facility's placement of a transgender or intersex detainee shall be consistent with the safety and security considerations of the facility, and placement and programming assignments for each transgender or intersex detainee shall be reassessed at least twice each year to review any threats to safety experienced by the detainee.

(c) When operationally feasible, transgender and intersex detainees shall be given the opportunity to shower separately from other detainees.

**§ 115.43 Protective custody.**

(a) The facility shall develop and follow written procedures consistent with the standards in this subpart for

each facility governing the management of its administrative segregation unit. These procedures, which should be developed in consultation with the ICE Enforcement and Removal Operations Field Office Director having jurisdiction for the facility, must document detailed reasons for placement of an individual in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

(b) Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort. The facility should assign detainees vulnerable to sexual abuse or assault to administrative segregation for their protection until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(c) Facilities that place vulnerable detainees in administrative segregation for protective custody shall provide those detainees access to programs, visitation, counsel and other services available to the general population to the maximum extent practicable.

(d) Facilities shall implement written procedures for the regular review of all vulnerable detainees placed in administrative segregation for their protection, as follows:

(1) A supervisory staff member shall conduct a review within 72 hours of the detainee's placement in administrative segregation to determine whether segregation is still warranted; and

(2) A supervisory staff member shall conduct, at a minimum, an identical review after the detainee has spent seven days in administrative segregation, and every week thereafter for the first 30 days, and every 10 days thereafter.

(e) Facilities shall notify the appropriate ICE Field Office Director no later than 72 hours after the initial placement into segregation, whenever a detainee has been placed in administrative segregation on the basis of a vulnerability to sexual abuse or assault.

(f) Upon receiving notification pursuant to paragraph (e) of this section, the ICE Field Office Director shall review the placement and consider:

(1) Whether continued placement in administrative segregation is warranted;

(2) Whether any alternatives are available and appropriate, such as placing the detainee in a less restrictive housing option at another facility or other appropriate custodial options; and

(3) Whether the placement is only as a last resort and when no other viable housing options exist.

## Reporting

### § 115.51 Detainee reporting.

(a) The agency and each facility shall develop policies and procedures to ensure that detainees have multiple ways to privately report sexual abuse, retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities that may have contributed to such incidents. The agency and each facility shall also provide instructions on how detainees may contact their consular official, the DHS Office of the Inspector General or, as appropriate, another designated office, to confidentially and, if desired, anonymously, report these incidents.

(b) The agency shall also provide, and the facility shall inform the detainees of, at least one way for detainees to report sexual abuse to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward detainee reports of sexual abuse to agency officials, allowing the detainee to remain anonymous upon request.

(c) Facility policies and procedures shall include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties and to promptly document any verbal reports.

### § 115.52 Grievances.

(a) The facility shall permit a detainee to file a formal grievance related to sexual abuse at any time during, after, or in lieu of lodging an informal grievance or complaint.

(b) The facility shall not impose a time limit on when a detainee may submit a grievance regarding an allegation of sexual abuse.

(c) The facility shall implement written procedures for identifying and handling time-sensitive grievances that involve an immediate threat to detainee health, safety, or welfare related to sexual abuse.

(d) Facility staff shall bring medical emergencies to the immediate attention of proper medical personnel for further assessment.

(e) The facility shall issue a decision on the grievance within five days of receipt and shall respond to an appeal of the grievance decision within 30 days. Facilities shall send all grievances related to sexual abuse and the facility's decisions with respect to such grievances to the appropriate ICE Field Office Director at the end of the grievance process.

(f) To prepare a grievance, a detainee may obtain assistance from another detainee, the housing officer or other facility staff, family members, or legal representatives. Staff shall take reasonable steps to expedite requests for assistance from these other parties.

### § 115.53 Detainee access to outside confidential support services.

(a) Each facility shall utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation and the prosecution of sexual abuse perpetrators to most appropriately address victims' needs. The facility shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers or, if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime.

(b) Each facility's written policies shall establish procedures to include outside agencies in the facility's sexual abuse prevention and intervention protocols, if such resources are available.

(c) Each facility shall make available to detainees information about local organizations that can assist detainees who have been victims of sexual abuse, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the facility shall make available the same information about national organizations. The facility shall enable reasonable communication between detainees and these organizations and agencies, in as confidential a manner as possible.

(d) Each facility shall inform detainees, prior to giving them access to outside resources, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

### § 115.54 Third-party reporting.

Each facility shall establish a method to receive third-party reports of sexual abuse in its immigration detention facilities and shall make available to the public information on how to report sexual abuse on behalf of a detainee.

**Official Response Following a Detainee Report**

**§ 115.61 Staff reporting duties.**

(a) The agency and each facility shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in a facility; retaliation against detainees or staff who reported or participated in an investigation about such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The agency shall review and approve facility policies and procedures and shall ensure that the facility specifies appropriate reporting procedures, including a method by which staff can report outside of the chain of command.

(b) Staff members who become aware of alleged sexual abuse shall immediately follow the reporting requirements set forth in the agency's and facility's written policies and procedures.

(c) Apart from such reporting, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to help protect the safety of the victim or prevent further victimization of other detainees or staff in the facility, or to make medical treatment, investigation, law enforcement, or other security and management decisions.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

**§ 115.62 Protection duties.**

If an agency employee or facility staff member has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

**§ 115.63 Reporting to other confinement facilities.**

(a) Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the agency or facility whose staff received the allegation shall notify the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred.

(b) The notification provided in paragraph (a) of this section shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency or facility shall document that it has provided such notification.

(d) The agency or facility office that receives such notification, to the extent the facility is covered by this subpart, shall ensure that the allegation is referred for investigation in accordance with these standards and reported to the appropriate ICE Field Office Director.

**§ 115.64 Responder duties.**

(a) Upon learning of an allegation that a detainee was sexually abused, the first security staff member to respond to the report, or his or her supervisor, shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the sexual abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

**§ 115.65 Coordinated response.**

(a) Each facility shall develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse.

(b) Each facility shall use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(c) If a victim of sexual abuse is transferred between facilities covered by subpart A or B of this part, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services.

(d) If a victim is transferred from a DHS immigration detention facility to a facility not covered by paragraph (c) of this section, the sending facility shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

**§ 115.66 Protection of detainees from contact with alleged abusers.**

Staff, contractors, and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

**§ 115.67 Agency protection against retaliation.**

(a) Staff, contractors, and volunteers, and immigration detention facility detainees, shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force.

(b) The agency shall employ multiple protection measures, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency and facility shall monitor to see if there are facts that may suggest possible retaliation by detainees or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any detainee disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff. DHS shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

**§ 115.68 Post-allegation protective custody.**

(a) The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.

(b) Detainee victims shall not be held for longer than five days in any type of administrative segregation, except in highly unusual circumstances or at the request of the detainee.

(c) A detainee victim who is in protective custody after having been subjected to sexual abuse shall not be returned to the general population until completion of a proper re-assessment, taking into consideration any increased vulnerability of the detainee as a result of the sexual abuse.

(d) Facilities shall notify the appropriate ICE Field Office Director

whenever a detainee victim has been held in administrative segregation for 72 hours.

(e) Upon receiving notification that a detainee victim has been held in administrative segregation, the ICE Field Office Director shall review the placement and consider:

(1) Whether the placement is only as a last resort and when no other viable housing options exist; and

(2) In cases where the detainee has been held in administrative segregation for longer than 5 days, whether the placement is justified by highly unusual circumstances or at the detainee's request.

## Investigations

### § 115.71 Criminal and administrative investigations.

(a) If the facility has responsibility for investigating allegations of sexual abuse, all investigations into alleged sexual abuse must be prompt, thorough, objective, and conducted by specially trained, qualified investigators.

(b) Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity.

(c)(1) The facility shall develop written procedures for administrative investigations, including provisions requiring:

(i) Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;

(ii) Interviewing alleged victims, suspected perpetrators, and witnesses;

(iii) Reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator;

(iv) Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph;

(v) An effort to determine whether actions or failures to act at the facility contributed to the abuse; and

(vi) Documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and

(vii) Retention of such reports for as long as the alleged abuser is detained or employed by the agency or facility, plus five years.

(2) Such procedures shall govern the coordination and sequencing of the two types of investigations, in accordance with paragraph (b) of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

(d) The agency shall review and approve the facility policy and procedures for coordination and conduct of internal administrative investigations with the assigned criminal investigative entity to ensure non-interference with criminal investigations.

(e) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(f) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

### § 115.72 Evidentiary standard for administrative investigations.

When an administrative investigation is undertaken, the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

### § 115.73 Reporting to detainees.

The agency shall, when the detainee is still in immigration detention, or where otherwise feasible, following an investigation into a detainee's allegation of sexual abuse, notify the detainee as to the result of the investigation and any responsive action taken.

## Discipline

### § 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or for violating agency or facility sexual abuse policies.

(b) The agency shall review and approve facility policies and procedures regarding disciplinary or adverse actions for staff and shall ensure that the facility policy and procedures specify disciplinary or adverse actions for staff, up to and including removal from their position and from the Federal service, when there is a substantiated allegation of sexual abuse, or when there has been a violation of agency sexual abuse rules, policies, or standards. Removal from their position and from the Federal service is the presumptive disciplinary sanction for staff who have engaged in or attempted or threatened to engage in sexual abuse, as defined under the definition of sexual abuse of a detainee by a staff member, contractor, or volunteer, paragraphs (1)–(4) and (7)–(8) of the definition of ''sexual abuse of a detainee by a staff member, contractor, or volunteer'' in § 115.6.

(c) Each facility shall report all removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to appropriate law enforcement agencies, unless the activity was clearly not criminal.

(d) Each facility shall make reasonable efforts to report removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to any relevant licensing bodies, to the extent known.

### § 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who has engaged in sexual abuse shall be prohibited from contact with detainees. Each facility shall make reasonable efforts to report to any relevant licensing body, to the extent known, incidents of substantiated sexual abuse by a contractor or volunteer. Such incidents shall also be reported to law enforcement agencies, unless the activity was clearly not criminal.

(b) Contractors and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

(c) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in sexual abuse, but have violated other provisions within these standards.

### § 115.78 Disciplinary sanctions for detainees.

(a) Each facility shall subject a detainee to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the detainee engaged in sexual abuse.

(b) At all steps in the disciplinary process provided in paragraph (a), any sanctions imposed shall be commensurate with the severity of the committed prohibited act and intended

to encourage the detainee to conform with rules and regulations in the future.

(c) Each facility holding detainees in custody shall have a detainee disciplinary system with progressive levels of reviews, appeals, procedures, and documentation procedure.

(d) The disciplinary process shall consider whether a detainee's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(e) The facility shall not discipline a detainee for sexual contact with staff unless there is a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

## Medical and Mental Care

### § 115.81 Medical and mental health assessments; history of sexual abuse.

(a) If the assessment pursuant to § 115.41 indicates that a detainee has experienced prior sexual victimization or perpetrated sexual abuse, staff shall, as appropriate, ensure that the detainee is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate.

(b) When a referral for medical follow-up is initiated, the detainee shall receive a health evaluation no later than two working days from the date of assessment.

(c) When a referral for mental health follow-up is initiated, the detainee shall receive a mental health evaluation no later than 72 hours after the referral.

### § 115.82 Access to emergency medical and mental health services.

(a) Detainee victims of sexual abuse shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

(b) Emergency medical treatment services provided to the victim shall be without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

### § 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) Each facility shall offer medical and mental health evaluation and, as appropriate, treatment to all detainees who have been victimized by sexual abuse while in immigration detention.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Detainee victims of sexually abusive vaginal penetration by a male abuser while incarcerated shall be offered pregnancy tests. If pregnancy results from an instance of sexual abuse, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.

(e) Detainee victims of sexual abuse while detained shall be offered tests for sexually transmitted infections as medically appropriate.

(f) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(g) The facility shall attempt to conduct a mental health evaluation of all known detainee-on-detainee abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

## Data Collection and Review

### § 115.86 Sexual abuse incident reviews.

(a) Each facility shall conduct a sexual abuse incident review at the conclusion of every investigation of sexual abuse and, where the allegation was not determined to be unfounded, prepare a written report within 30 days of the conclusion of the investigation recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so in a written response. Both the report and response shall be forwarded to the agency PSA Coordinator.

(b) The review team shall consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.

(c) Each facility shall conduct an annual review of all sexual abuse investigations and resulting incident reviews to assess and improve sexual abuse intervention, prevention and response efforts. If the facility has not had any reports of sexual abuse during the annual reporting period, then the facility shall prepare a negative report. The results and findings of the annual review shall be provided to the facility administrator, Field Office Director or his or her designee, and the agency PSA Coordinator.

### § 115.87 Data collection.

(a) Each facility shall maintain in a secure area all case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment, if necessary, and/or counseling in accordance with these standards and applicable agency policies, and in accordance with established schedules. The DHS Office of Inspector General shall maintain the official investigative file related to claims of sexual abuse investigated by the DHS Office of Inspector General.

(b) On an ongoing basis, the PSA Coordinator shall work with relevant facility PSA Compliance Managers and DHS entities to share data regarding effective agency response methods to sexual abuse.

(c) On a regular basis, the PSA Coordinator shall prepare a report for ICE leadership compiling information received about all incidents or allegations of sexual abuse of detainees in immigration detention during the period covered by the report, as well as ongoing investigations and other pending cases.

(d) On an annual basis, the PSA Coordinator shall aggregate, in a manner that will facilitate the agency's ability to detect possible patterns and help prevent future incidents, the incident-based sexual abuse data, including the number of reported sexual abuse allegations determined to be substantiated, unsubstantiated, or unfounded, or for which investigation is ongoing, and for each incident found to be substantiated, information concerning:

(1) The date, time, location, and nature of the incident;

(2) The demographic background of the victim and perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);

(3) The reporting timeline for the incident (including the name of individual who reported the incident, and the date and time the report was received);

(4) Any injuries sustained by the victim;

(5) Post-report follow up responses and action taken by the facility (e.g., housing placement/custody classification, medical examination, mental health counseling, etc.); and

(6) Any sanctions imposed on the perpetrator.

(e) Upon request, the agency shall provide all data described in this section from the previous calendar year to the Office for Civil Rights and Civil Liberties no later than June 30.

**§ 115.88 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to § 115.87 of this part in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each immigration detention facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in preventing, detecting, and responding to sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site.

(d) The agency may redact specific material from the reports, when appropriate for safety or security, but must indicate the nature of the material redacted.

**§ 115.89 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained in accordance with agency record retention policies and the agency protocol regarding investigation of allegations.

(b) The agency shall make all aggregated sexual abuse data from immigration detention facilities under its direct control and from any private agencies with which it contracts available to the public at least annually on its Web site consistent with existing agency information disclosure policies and processes.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

### Audits and Compliance

**§ 115.93 Audits of standards.**

(a) During the three-year period starting on July 6. 2015, and during each three-year period thereafter, the agency shall ensure that each immigration detention facility that has adopted these standards is audited at least once.

(b) The agency may require an expedited audit if the agency has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The agency may also include referrals to resources that may assist the facility with PREA-related issues.

(c) Audits under this section shall be conducted pursuant to §§ 115.201 through 115.205.

(d) Audits under this section shall be coordinated by the agency with the DHS Office for Civil Rights and Civil Liberties, which may request an expedited audit if it has reason to believe that an expedited audit is appropriate.

### Additional Provisions in Agency Policies

**§ 115.95 Additional provisions in agency policies.**

The regulations in this subpart A establish minimum requirements for agencies and facilities. Agency and facility policies may include additional requirements.

## Subpart B—Standards for DHS Holding Facilities Coverage

**§ 115.110 Coverage of DHS holding facilities.**

This subpart B covers all DHS holding facilities. Standards found in subpart A of this part are not applicable to DHS facilities except ICE immigration detention facilities.

### Prevention Planning

**§ 115.111 Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.**

(a) The agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) The agency shall employ or designate an upper-level, agency-wide PSA Coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with these standards in all of its holding facilities.

**§ 115.112 Contracting with non-DHS entities for the confinement of detainees.**

(a) An agency that contracts for the confinement of detainees in holding facilities operated by non-DHS private or public agencies or other entities, including other government agencies, shall include in any new contracts, contract renewals, or substantive contract modifications the entity's obligation to adopt and comply with these standards.

(b) Any new contracts, contract renewals, or substantive contract modifications shall provide for agency contract monitoring to ensure that the contractor is complying with these standards.

(c) To the extent an agency contracts for confinement of holding facility detainees, all rules in this subpart that apply to the agency shall apply to the contractor, and all rules that apply to staff or employees shall apply to contractor staff.

**§ 115.113 Detainee supervision and monitoring.**

(a) The agency shall ensure that each facility maintains sufficient supervision of detainees, including through appropriate staffing levels and, where applicable, video monitoring, to protect detainees against sexual abuse.

(b) The agency shall develop and document comprehensive detainee supervision guidelines to determine and meet each facility's detainee supervision needs, and shall review those supervision guidelines and their application at each facility at least annually.

(c) In determining adequate levels of detainee supervision and determining the need for video monitoring, agencies shall take into consideration the physical layout of each holding facility, the composition of the detainee population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse, the findings and recommendations of sexual abuse

incident review reports, and any other relevant factors, including but not limited to the length of time detainees spend in agency custody.

**§ 115.114 Juvenile and family detainees.**

(a) Juveniles shall be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as with any other laws, regulations, or legal requirements.

(b) Unaccompanied juveniles shall generally be held separately from adult detainees. The juvenile may temporarily remain with a non-parental adult family member where:

(1) The family relationship has been vetted to the extent feasible, and

(2) The agency determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.

**§ 115.115 Limits to cross-gender viewing and searches.**

(a) Searches may be necessary to ensure the safety of officers, civilians and detainees; to detect and secure evidence of criminal activity; and to promote security, safety, and related interests at DHS holding facilities.

(b) Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners. An agency shall not conduct visual body cavity searches of juveniles and, instead, shall refer all such body cavity searches of juveniles to a medical practitioner.

(c) All strip searches and visual body cavity searches shall be documented.

(d) The agency shall implement policies and procedures that enable detainees to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement under medical supervision. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

(e) The agency and facility shall not search or physically examine a detainee for the sole purpose of determining the detainee's gender. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records (if available), or, if necessary, learning that information as part of a broader medical examination conducted in private, by a medical practitioner.

(f) The agency shall train law enforcement staff in proper procedures for conducting pat-down searches, including cross-gender pat-down searches and searches of transgender and intersex detainees. All pat-down searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and agency policy, including consideration of officer safety.

**§ 115.116 Accommodating detainees with disabilities and detainees who are limited English proficient.**

(a) The agency shall take appropriate steps to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that any written materials related to sexual abuse are provided in formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse to detainees who are limited English proficient, including steps to provide in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse, the agency shall provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation, and the agency determines that such interpretation is appropriate and consistent with DHS policy. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse is not appropriate in matters relating to allegations of sexual abuse.

**§ 115.117 Hiring and promotion decisions.**

(a) The agency shall not hire or promote anyone who may have contact with detainees, and shall not enlist the services of any contractor or volunteer who may have contact with detainees, who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) When the agency is considering hiring or promoting staff, it shall ask all applicants who may have contact with detainees directly about previous misconduct described in paragraph (a) of this section, in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(c) Before hiring new employees who may have contact with detainees, the agency shall require a background investigation to determine whether the candidate for hire is suitable for employment with the agency. The agency shall conduct an updated background investigation for agency employees every five years.

(d) The agency shall also perform a background investigation before

enlisting the services of any contractor who may have contact with detainees.

(e) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination or withdrawal of an offer of employment, as appropriate.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

(g) In the event the agency contracts with a facility for the confinement of detainees, the requirements of this section otherwise applicable to the agency also apply to the facility.

**§ 115.118 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new holding facility and in planning any substantial expansion or modification of existing holding facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect detainees from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a holding facility, the agency shall consider how such technology may enhance the agency's ability to protect detainees from sexual abuse.

## Responsive Planning

**§ 115.121 Evidence protocols and forensic medical examinations.**

(a) To the extent that the agency is responsible for investigating allegations of sexual abuse in its holding facilities, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The protocol shall be developed in coordination with DHS and shall be developmentally appropriate for juveniles, where applicable.

(b) In developing the protocol referred to in paragraph (a) of this section, the agency shall consider how best to utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs.

(c) Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the agency shall arrange for or refer the alleged victim detainee to a medical facility to undergo a forensic medical examination, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel.

(d) If, in connection with an allegation of sexual abuse, the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the extent available, consistent with security needs.

(e) To the extent that the agency is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (d) of this section.

**§ 115.122 Policies to ensure investigation of allegations and appropriate agency oversight.**

(a) The agency shall establish a protocol to ensure that each allegation of sexual abuse is investigated by the agency, or referred to an appropriate investigative authority.

(b) The agency protocol shall be developed in coordination with DHS investigative entities; shall include a description of the responsibilities of both the agency and the investigative entities; and shall require the documentation and maintenance, for at least five years, of all reports and referrals of allegations of sexual abuse. The agency shall post its protocol on its Web site, redacted if appropriate.

(c) The agency protocol shall ensure that each allegation is promptly reported to the Joint Intake Center and, unless the allegation does not involve potentially criminal behavior, promptly referred for investigation to an appropriate law enforcement agency with the legal authority to conduct criminal investigations. The agency may separately, and in addition to the above reports and referrals, conduct its own investigation.

(d) The agency shall ensure that all allegations of detainee sexual abuse are promptly reported to the PSA Coordinator and to the appropriate offices within the agency and within DHS to ensure appropriate oversight of the investigation.

(e) The agency shall ensure that any alleged detainee victim of sexual abuse that is criminal in nature is provided timely access to U nonimmigrant status information.

## Training and Education

**§ 115.131 Employee, contractor, and volunteer training.**

(a) The agency shall train, or require the training of all employees, contractors, and volunteers who may have contact with holding facility detainees, to be able to fulfill their responsibilities under these standards, including training on:

(1) The agency's zero-tolerance policies for all forms of sexual abuse;

(2) The right of detainees and employees to be free from sexual abuse, and from retaliation for reporting sexual abuse;

(3) Definitions and examples of prohibited and illegal sexual behavior;

(4) Recognition of situations where sexual abuse may occur;

(5) Recognition of physical, behavioral, and emotional signs of sexual abuse, and methods of preventing such occurrences;

(6) Procedures for reporting knowledge or suspicion of sexual abuse;

(7) How to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees; and

(8) The requirement to limit reporting of sexual abuse to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes.

(b) All current employees, contractors and volunteers who may have contact with holding facility detainees shall be trained within two years of the effective date of these standards, and the agency shall provide refresher information, as appropriate.

(c) The agency shall document those employees who may have contact with detainees have completed the training and receive and maintain for at least five years confirmation that contractors and volunteers have completed the training.

**§ 115.132 Notification to detainees of the agency's zero-tolerance policy.**

The agency shall make public its zero-tolerance policy regarding sexual abuse and ensure that key information regarding the agency's zero-tolerance policy is visible or continuously and readily available to detainees, for example, through posters, detainee handbooks, or other written formats.

**§ 115.133 [Reserved]**

**§ 115.134 Specialized training: Investigations.**

(a) In addition to the training provided to employees, DHS agencies

with responsibility for holding facilities shall provide specialized training on sexual abuse and effective cross-agency coordination to agency investigators who conduct investigations into allegations of sexual abuse at holding facilities. All investigations into alleged sexual abuse must be conducted by qualified investigators.

(b) The agency must maintain written documentation verifying specialized training provided to agency investigators pursuant to this section.

## Assessment for Risk of Sexual Victimization and Abusiveness

### § 115.141 Assessment for risk of victimization and abusiveness.

(a) Before placing any detainees together in a holding facility, agency staff shall consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused and, when appropriate, shall take necessary steps to mitigate any such danger to the detainee.

(b) All detainees who may be held overnight with other detainees shall be assessed to determine their risk of being sexually abused by other detainees or sexually abusive toward other detainees; staff shall ask each such detainee about his or her own concerns about his or her physical safety.

(c) The agency shall also consider, to the extent that the information is available, the following criteria to assess detainees for risk of sexual victimization:

(1) Whether the detainee has a mental, physical, or developmental disability;

(2) The age of the detainee;

(3) The physical build and appearance of the detainee;

(4) Whether the detainee has previously been incarcerated or detained;

(5) The nature of the detainee's criminal history; and

(6) Whether the detainee has any convictions for sex offenses against an adult or child;

(7) Whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(8) Whether the detainee has self-identified as having previously experienced sexual victimization; and

(9) The detainee's own concerns about his or her physical safety.

(d) If detainees are identified pursuant to the assessment under this section to be at high risk of victimization, staff shall provide such detainees with heightened protection, to include continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is determined to be feasible.

(e) The facility shall implement appropriate controls on the dissemination of sensitive information provided by detainees under this section.

## Reporting

### § 115.151 Detainee reporting.

(a) The agency shall develop policies and procedures to ensure that the detainees have multiple ways to privately report sexual abuse, retaliation for reporting sexual abuse, or staff neglect or violations of responsibilities that may have contributed to such incidents, and shall provide instructions on how detainees may contact the DHS Office of the Inspector General or, as appropriate, another designated office, to confidentially and, if desired, anonymously, report these incidents.

(b) The agency shall also provide, and shall inform the detainees of, at least one way for detainees to report sexual abuse to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward detainee reports of sexual abuse to agency officials, allowing the detainee to remain anonymous upon request.

(c) Agency policies and procedures shall include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties and to promptly document any verbal reports.

### § 115.152–115.153 [Reserved]

### § 115.154 Third-party reporting.

The agency shall establish a method to receive third-party reports of sexual abuse in its holding facilities. The agency shall make available to the public information on how to report sexual abuse on behalf of a detainee.

## Official Response Following a Detainee Report

### § 115.161 Staff reporting duties.

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred to any detainee; retaliation against detainees or staff who reported or participated in an investigation about such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Agency policy shall include methods by which staff can report misconduct outside of their chain of command.

(b) Staff members who become aware of alleged sexual abuse shall immediately follow the reporting requirements set forth in the agency's written policies and procedures.

(c) Apart from such reporting, the agency and staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to help protect the safety of the victim or prevent further victimization of other detainees or staff in the facility, or to make medical treatment, investigation, law enforcement, or other security and management decisions.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

### § 115.162 Agency protection duties.

When an agency employee has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

### § 115.163 Reporting to other confinement facilities.

(a) Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the agency that received the allegation shall notify the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred.

(b) The notification provided in paragraph (a) of this section shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The agency office that receives such notification, to the extent the facility is covered by this subpart, shall ensure that the allegation is referred for investigation in accordance with these standards.

### § 115.164 Responder duties.

(a) Upon learning of an allegation that a detainee was sexually abused, the first law enforcement staff member to respond to the report, or his or her supervisor, shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the sexual abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a law enforcement staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify law enforcement staff.

**§ 115.165 Coordinated response.**

(a) The agency shall develop a written institutional plan and use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(b) If a victim of sexual abuse is transferred between facilities covered by subpart A or B of this part, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services.

(c) If a victim is transferred from a DHS holding facility to a facility not covered by paragraph (b) of this section, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

**§ 115.166 Protection of detainees from contact with alleged abusers.**

Agency management shall consider whether any staff, contractor, or volunteer alleged to have perpetrated sexual abuse should be removed from duties requiring detainee contact pending the outcome of an investigation, and shall do so if the seriousness and plausibility of the allegation make removal appropriate.

**§ 115.167 Agency protection against retaliation.**

Agency employees shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force.

**Investigations**

**§ 115.171 Criminal and administrative investigations.**

(a) If the agency has responsibility for investigating allegations of sexual abuse, all investigations into alleged sexual abuse must be prompt, thorough, objective, and conducted by specially trained, qualified investigators.

(b) Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the agency shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS and the assigned criminal investigative entity.

(c) The agency shall develop written procedures for administrative investigations, including provisions requiring:

(1) Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;

(2) Interviewing alleged victims, suspected perpetrators, and witnesses;

(3) Reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator;

(4) Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph;

(5) Documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and

(6) Retention of such reports for as long as the alleged abuser is detained or employed by the agency, plus five years. Such procedures shall establish the coordination and sequencing of the two types of investigations, in accordance with paragraph (b) of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

(d) The departure of the alleged abuser or victim from the employment or control of the agency shall not provide a basis for terminating an investigation.

(e) When outside agencies investigate sexual abuse, the agency shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**§ 115.172 Evidentiary standard for administrative investigations.**

When an administrative investigation is undertaken, the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

**Discipline**

**§ 115.176 Disciplinary sanctions for staff.**

(a) Staff shall be subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or violating agency sexual abuse policies.

(b) The agency shall review and approve policy and procedures regarding disciplinary or adverse action for staff and shall ensure that the policy and procedures specify disciplinary or adverse actions for staff, up to and including removal from their position and from the Federal service, when there is a substantiated allegation of sexual abuse, or when there has been a violation of agency sexual abuse rules, policies, or standards. Removal from their position and from the Federal service is the presumptive disciplinary sanction for staff who have engaged in or attempted or threatened to engage in sexual abuse, as defined under the definition of sexual abuse of a detainee by a staff member, contractor, or volunteer, paragraphs (1)–(4) and (7)–(8) of the definition of ''sexual abuse of a detainee by a staff member, contractor, or volunteer'' in § 115.6.

(c) Each facility shall report all removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to appropriate law enforcement agencies, unless the activity was clearly not criminal.

(d) Each agency shall make reasonable efforts to report removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to any relevant licensing bodies, to the extent known.

**§ 115.177 Corrective action for contractors and volunteers.**

(a) Any contractor or volunteer suspected of perpetrating sexual abuse shall be prohibited from contact with detainees. The agency shall also consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in

sexual abuse, but have violated other provisions within these standards. The agency shall be responsible for promptly reporting sexual abuse allegations and incidents involving alleged contractor or volunteer perpetrators to an appropriate law enforcement agency as well as to the Joint Intake Center or another appropriate DHS investigative office in accordance with DHS policies and procedures. The agency shall make reasonable efforts to report to any relevant licensing body, to the extent known, incidents of substantiated sexual abuse by a contractor or volunteer.

(b) Contractors and volunteers suspected of perpetrating sexual abuse may be removed from all duties requiring detainee contact pending the outcome of an investigation, as appropriate.

## Medical and Mental Care

### § 115.181 [Reserved]

### § 115.182 Access to emergency medical services.

(a) Detainee victims of sexual abuse shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

(b) Emergency medical treatment services provided to the victim shall be without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

## Data Collection and Review

### § 115.186 Sexual abuse incident reviews.

(a) The agency shall conduct a sexual abuse incident review at the conclusion of every investigation of sexual abuse and, where the allegation was not determined to be unfounded, prepare a written report recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse. Such review shall ordinarily occur within 30 days of the agency receiving the investigation results from the investigative authority. The agency shall implement the recommendations for improvement, or shall document its reasons for not doing so in a written response. Both the report and response shall be forwarded to the agency PSA Coordinator.

(b) The agency shall conduct an annual review of all sexual abuse investigations and resulting incident reviews to assess and improve sexual abuse intervention, prevention and response efforts.

### § 115.187 Data collection.

(a) The agency shall maintain in a secure area all agency case records associated with claims of sexual abuse, in accordance with these standards and applicable agency policies, and in accordance with established schedules. The DHS Office of Inspector General shall maintain the official investigative file related to claims of sexual abuse investigated by the DHS Office of Inspector General.

(b) On an annual basis, the PSA Coordinator shall aggregate, in a manner that will facilitate the agency's ability to detect possible patterns and help prevent future incidents, the incident-based sexual abuse data available, including the number of reported sexual abuse allegations determined to be substantiated, unsubstantiated, or unfounded, or for which investigation is ongoing, and for each incident found to be substantiated, such information as is available to the PSA Coordinator concerning:

(1) The date, time, location, and nature of the incident;

(2) The demographic background of the victim and perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);

(3) The reporting timeline for the incident (including the name of individual who reported the incident, and the date and time the report was received);

(4) Any injuries sustained by the victim;

(5) Post-report follow up responses and action taken by the agency (e.g., supervision, referral for medical or mental health services, etc.); and

(6) Any sanctions imposed on the perpetrator.

(c) The agency shall maintain, review, and collect data as needed from all available agency records.

(d) Upon request, the agency shall provide all such data from the previous calendar year to the Office for Civil Rights and Civil Liberties no later than June 30.

### § 115.188 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.187 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in preventing, detecting, and responding to sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site.

(d) The agency may redact specific material from the reports, when appropriate for safety or security, but must indicate the nature of the material redacted.

### § 115.189 Data storage, publication, and destruction.

(a) The agency shall ensure that data collected pursuant to § 115.187 are securely retained in accordance with agency record retention policies and the agency protocol regarding investigation of allegations.

(b) The agency shall make all aggregated sexual abuse data from holding facilities under its direct control and from any private agencies with which it contracts available to the public at least annually on its Web site consistent with agency information disclosure policies and processes.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.187 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

## Audits and Compliance

### § 115.193 Audits of standards.

(a) Within three years of July 6, 2015, the agency shall ensure that each of its immigration holding facilities that houses detainees overnight and has adopted these standards is audited. For any such holding facility established after July 6, 2015, the agency shall ensure that the facility is audited within three years. Audits of new holding facilities as well as holding facilities that have previously failed to meet the standards shall occur as soon as practicable within the three-year cycle; however, where it is necessary to prioritize, priority shall be given to facilities that have previously failed to meet the standards.

(1) Audits required under this paragraph (a) shall:

(i) Include a determination whether the holding facility is low-risk based on its physical characteristics and whether it passes the audit conducted pursuant to paragraph (a)(1)(ii) of this section,

(ii) Be conducted pursuant to §§ 115.201 through 115.205, and

(iii) Be coordinated by the agency with the DHS Office for Civil Rights and Civil Liberties, which may request an expedited audit if it has reason to believe that an expedited audit is appropriate.

(2) [Reserved]

(b) Following an audit, the agency shall ensure that any immigration holding facility that houses detainees overnight and is determined to be low-risk, based on its physical characteristics and passing its most recent audit, is audited at least once every five years.

(1) Audits required under this paragraph (b) shall:

(i) Include a determination whether the holding facility is low-risk based on its physical characteristics and whether it passes the audit conducted pursuant to paragraph (b)(1)(ii) of this section,

(ii) Be conducted pursuant to §§ 115.201 through 115.205, and

(iii) Be coordinated by the agency with the DHS Office for Civil Rights and Civil Liberties, which may request an expedited audit if it has reason to believe that an expedited audit is appropriate.

(2) [Reserved]

(c) Following an audit, the agency shall ensure that any immigration holding facility that houses detainees overnight and is determined to not be low-risk, based on its physical characteristics or not passing its most recent audit, is audited at least once every three years.

(1) Audits required under this paragraph (c) shall:

(i) Include a determination whether the holding facility is low-risk based on its physical characteristics and whether it passes the audit conducted by paragraph (c)(1)(ii) of this section,

(ii) Be conducted pursuant to §§ 115.201 through 115.205, and

(iii) Be coordinated by the agency with the DHS Office for Civil Rights and Civil Liberties, which may request an expedited audit if it has reason to believe that an expedited audit is appropriate.

(2) [Reserved]

## Additional Provisions in Agency Policies

### § 115.195 Additional provisions in agency policies.

The regulations in this subpart B establish minimum requirements for agencies. Agency policies may include additional requirements.

## Subpart C—External Auditing and Corrective Action

### § 115.201 Scope of audits.

(a) The agency shall develop and issue an instrument that is coordinated with the DHS Office for Civil Rights and Civil Liberties, which will provide guidance on the conduct of and contents of the audit;

(b) The auditor shall review all relevant agency policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(c) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(d) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(e) The agency shall provide the auditor with relevant documentation to complete a thorough audit of the facility.

(f) The auditor shall retain and preserve all documentation (including, e.g., videotapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the agency upon request.

(g) The auditor shall interview a representative sample of detainees and of staff, and the facility shall make space available suitable for such interviews.

(h) The auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.

(i) The auditor shall be permitted to conduct private interviews with detainees.

(j) Detainees shall be permitted to send confidential information or correspondence to the auditor.

(k) Auditors shall attempt to solicit input from community-based or victim advocates who may have insight into relevant conditions in the facility.

(l) All sensitive but unclassified information provided to auditors will include appropriate designations and limitations on further dissemination. Auditors will be required to follow all appropriate procedures for handling and safeguarding such information.

### § 115.202 Auditor qualifications.

(a) An audit shall be conducted by entities or individuals outside of the agency and outside of DHS that have relevant audit experience.

(b) All auditors shall be certified by the agency, in coordination with DHS. The agency, in coordination with DHS, shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting other audits, or other consulting related to detention reform) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent audits or other consulting related to detention reform.

### § 115.203 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the facility under review.

(b) Audit reports shall state whether facility policies and procedures comply with relevant standards.

(c) For each of these standards, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable detainee or staff information from their reports, but shall provide such information to the agency upon request.

(f) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public. The agency shall redact any sensitive but unclassified information

(including law enforcement sensitive information) prior to providing such reports publicly.

**§ 115.204 Audit corrective action plan.**

(a) A finding of ''Does Not Meet Standard'' with one or more standards shall trigger a 180-day corrective action period.

(b) The agency and the facility shall develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that is has achieved compliance.

**§ 115.205 Audit appeals.**

(a) A facility may lodge an appeal with the agency regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the agency determines that the facility has stated good cause for a re-evaluation, the facility may commission a re-audit by an auditor mutually agreed upon by the agency and the facility. The facility shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

**Jeh Charles Johnson,**

*Secretary.*

[FR Doc. 2014–04675 Filed 3–6–14; 8:45 am]

BILLING CODE 9110–9B–P

# FEDERAL REGISTER

Vol. 79 Friday,

No. 45 March 7, 2014


Part III

## The President

Proclamation 9088—Women's History Month, 2014

Federal Register
Vol. 79, No. 45
Friday, March 7, 2014

# Presidential Documents

**Title 3—**

## The President

**Proclamation 9088 of March 1, 2014**

## Women's History Month, 2014

**By the President of the United States of America**

**A Proclamation**

Throughout our Nation's history, American women have led movements for social and economic justice, made groundbreaking scientific discoveries, enriched our culture with stunning works of art and literature, and charted bold directions in our foreign policy. They have served our country with valor, from the battlefields of the Revolutionary War to the deserts of Iraq and mountains of Afghanistan. During Women's History Month, we recognize the victories, struggles, and stories of the women who have made our country what it is today.

This month, we are reminded that even in America, freedom and justice have never come easily. As part of a centuries-old and ever-evolving movement, countless women have put their shoulder to the wheel of progress—activists who gathered at Seneca Falls and gave expression to a righteous cause; trailblazers who defied convention and shattered glass ceilings; millions who claimed control of their own bodies, voices, and lives. Together, they have pushed our Nation toward equality, liberation, and acceptance of women's right—not only to choose their own destinies—but also to shape the futures of peoples and nations.

Through the grit and sacrifice of generations, American women and girls have gained greater opportunities and more representation than ever before. Yet they continue to face workplace discrimination, a higher risk of sexual assault, and an earnings gap that will cost the average woman hundreds of thousands of dollars over the course of her working lifetime.

As women fight for their seats at the head of the table, my Administration offers our unwavering support. The first bill I signed as President was the Lilly Ledbetter Fair Pay Act, which made it easier for women to challenge pay discrimination. Under the Affordable Care Act, we banned insurance companies from charging women more because of their gender, and we continue to defend this law against those who would let women's bosses influence their health care decisions. Last year, recognizing a storied history of patriotic and courageous service in our Armed Forces, the United States military opened ground combat units to women in uniform. We are also encouraging more girls to explore their passions for science, technology, engineering, and mathematics and taking action to create economic opportunities for women across the globe. Last fall, we finalized a rule to extend overtime and minimum wage protections to homecare workers, 90 percent of whom are women. And this January, I launched a White House task force to protect students from sexual assault.

As we honor the many women who have shaped our history, let us also celebrate those who make progress in our time. Let us remember that when women succeed, America succeeds. And from Wall Street to Main Street, in the White House and on Capitol Hill—let us put our Nation on the path to success.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2014 as Women's History Month. I call upon all Americans to observe this month

and to celebrate International Women's Day on March 8, 2014, with appropriate programs, ceremonies, and activities. I also invite all Americans to visit www.WomensHistoryMonth.gov to learn more about the generations of women who have left enduring imprints on our history.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–05180
Filed 3–6–14; 11:15 am]
Billing code 3295–F4

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