AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 80 Thursday,
No. 131 July 9, 2015

Pages 39377–39668

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 80 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 80, No. 131

Thursday, July 9, 2015

Aging Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Reporting Requirements for the Older American Act Title VI Grant Program, 39437

Agriculture Department
See Forest Service
See Rural Business-Cooperative Service
See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39481–39482

Architectural and Transportation Barriers Compliance Board

NOTICES
Meetings:
Architectural and Transportation Barriers Compliance Board, 39408

Bureau of the Fiscal Service
NOTICES
Prompt Payment Interest Rate; Contract Disputes Act, 39482–39483

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39437–39438

Coast Guard
RULES
Drawbridge Operations:
Milford Haven, Grimstead and Gwynn's Island, VA, 39383
Saugus River, Saugus, MA, 39382–39383
Safety Zones:
Captain of the Port Boston Fireworks Display Zone, Boston Harbor, Boston, MA, 39383–39384
Cleveland Yachting Club Annual Regatta Fireworks Display, Lake Erie, Rocky River, OH, 39386–39388
Lake Metroparks Stand-Up Paddleboard Race, Lake Erie, Fairport Harbor, OH, 39384–39386
Special Local Regulations:
Annual Bayview Mackinac Race, 39382
PROPOSED RULES
Regulated Navigation Areas:
Ice Covered Waterways in the Fifth Coast Guard District, 39403–39406
Safety Zones:
Incredoubleman Triathlon, Henderson Bay, Lake Ontario, Sackets Harbor, NY, 39400–39402

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency
PROPOSED RULES
Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act, 39390–39392

Court Services and Offender Supervision Agency for the District of Columbia
PROPOSED RULES
Community Supervision:
Administrative Sanctions and GPS Monitoring as a Supervision Tool; Correction, 39400

Defense Department
See Navy Department
RULES
Privacy Act; Implementation, 39381–39382
NOTICES
Privacy Act; Systems of Records, 39418–39420

Defense Nuclear Facilities Safety Board
PROPOSED RULES
Freedom of Information Act Fee Schedule Update, 39389

Economic Development Administration
NOTICES
Petitions:
Trade Adjustment Assistance Eligibility, 39408–39409

Education Department
PROPOSED RULES
Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 39608–39641
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
EDFacts Data Collection School Years 2016–17, 2017–18, and 2018–19, 39421–39422

Energy Department
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
PROPOSED RULES
Energy Conservation Program:
Standards for Commercial Prerinse Spray Valves, 39486–39539
Test Procedures for Integrated Light-Emitting Diode Lamps, 39644–39667
NOTICES
Requests for Information:
National Power Transformer Reserve, 39422–39423

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Bioproducts to Enable Biofuels; Workshops, 39423–39424

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39424–39427

Environmental Protection Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Participation by Disadvantaged Business Enterprises in Procurements under EPA Financial Assistance Agreements, 39428–39429
Cross-Media Electronic Reporting:
State of Alaska, Authorized Program Revision Approval, 39427–39428
Proposed Settlement Agreements:
Iron Springs Mining District Site, Uncompahgre National Forest, San Miguel County, CO, 39428

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
The Boeing Company Airplanes, 39392–39397

Federal Communications Commission
NOTICES
Debarments:
Federal Lifeline Universal Service Support Mechanism; Suspension and Commencement, 39429–39432

Federal Deposit Insurance Corporation
PROPOSED RULES
Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act, 39390–39392

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 39432

Federal Labor Relations Authority
NOTICES
Board Membership:
Senior Executive Service Performance Review Board, 39432–39433

Federal Reserve System
PROPOSED RULES
Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act, 39390–39392
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39433–39436
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 39436–39437
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 39436

Fish and Wildlife Service
NOTICES
Conservation Plans:
Smith's Blue Butterfly; Low-Effect Habitat; Repair of Five Bridges, Point Sur State Historic Park, Monterey County, CA, 39444–39446
Environmental Assessments; Availability, etc.:
James River National Wildlife Refuge, Prince George County, VA; Final Comprehensive Conservation Plan, 39446–39447

Food and Drug Administration
NOTICES
Debarment Orders:
Patricia Durr, 39439–39440
Guidance:
Heparin-Containing Medical Devices and Combination Products: Recommendations for Labeling and Safety Testing, 39440–39441
Meetings with the Office of Orphan Products Development, 39438–39439
Meetings:
Acute Ischemic Stroke Medical Devices Trials Workshop, 39441–39442

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 39483

Foreign-Trade Zones Board
NOTICES
Production Activities:
Givaudan Fragrances Corp., Foreign-Trade Zone 44, Mount Olive, NJ, 39409

Forest Service
NOTICES
Meetings:
Grand Mesa Uncompahgre Gunnison Resource Advisory Committee, 39407–39408
Tuolumne and Mariposa Counties Resource Advisory Committee, 39407

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39442–39443

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Tax on Certain Foreign Procurement; Correction, 39397–39400

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Uncoated Paper from the People's Republic of China; Corrections, 39409

International Trade Commission
RULES
Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions; Investigations with Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries; Trade Remedy Assistance, 39377–39381
NOTICES
Meetings; Sunshine Act, 39447–39448

Justice Department
NOTICES
Proposed Consent Decrees under the Oil Pollution Act, 39448

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Plats of Surveys:
Oregon/Washington, 39447

Mine Safety and Health Administration
NOTICES
Brookwood-Sago Mine Safety Grants; Correction, 39450
Petitions for Modifications:
Application of Existing Mandatory Safety Standards, 39448–39450

National Oceanic and Atmospheric Administration
PROPOSED RULES
Takes and Importation of Marine Mammals:
Northeast Fisheries Science Center Fisheries Research, 39542–39605
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 39410–39411
Permits:
Marine Mammals; File No. 14450, 39411
Marine Mammals; File No. 19293, 39410
Marine Mammals; File Nos. 17278 and 17557, 39411–39412

Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39420–39421

Nuclear Regulatory Commission
NOTICES
Guidance:
NuScale Power, LLC, Design-Specific Review Standard and Safety Review Matrix; Correction, 39454
License Amendment Applications:
Virgil C. Summer Nuclear Station, Units 2 and 3, 39450–39454
Vogtle Electric Generating Station, Units 3 and 4, 39454–39458

Patent and Trademark Office
NOTICES
United States Patent and Trademark Office and Korean Intellectual Property Office Collaborative Search Pilot Program, 39412–39418

Postal Regulatory Commission
NOTICES
New Postal Products, 39458

Rural Business-Cooperative Service
RULES
Biorefinery, Renewable Chemicals, and Biobased Product Manufacturing Assistance Program; Correction, 39377

Rural Utilities Service
RULES
Biorefinery, Renewable Chemicals, and Biobased Product Manufacturing Assistance Program; Correction, 39377

Securities and Exchange Commission
NOTICES
Applications and Temporary Orders:
Macquarie Capital (USA) Inc., et al., 39474–39477
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc.; BATS Y-Exchange, Inc.; et al., 39462–39463
Financial Industry Regulatory Authority, Inc., 39463–39468
National Stock Exchange, Inc., 39460–39462
New York Stock Exchange, LLC, 39468–39472
NYSE Arca, Inc., 39473–39474
NYSE MKT LLC, 39458–39460

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39479
Disaster Declarations:
Arkansas, 39477–39478
Texas; Amendment 3, 39477
Texas; Amendment 5, 39478

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition:
Philippine Gold — Treasures of Forgotten Kingdoms, 39479–39480
Royal Hawaiian Featherwork — Na Hulu Ali'i, 39479
Treasures from the House of Alba—500 Years of Art and Collecting, 39480

Surface Transportation Board
NOTICES
Continuance in Control Exemptions:
Iowa Pacific Holdings, LLC and Permian Basin Railways; Illinois Co. Rail Road, LLC, 39480
Lease and Operation Exemptions:
Illinois Co. Rail Road, LLC; North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC, 39481

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Bureau of the Fiscal Service
See Comptroller of the Currency
See Foreign Assets Control Office
See Internal Revenue Service

U.S. Customs and Border Protection
NOTICES
Meetings:
Advisory Committee on Commercial Operations, 39443–39444

Separate Parts In This Issue

Part II
Energy Department, 39486–39539

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 39542–39605

Part IV
Education Department, 39608–39641

Part V
Energy Department, 39644–39667

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
4279 39377
4287 39377

10 CFR
Proposed Rules:
429 (2 documents) 39486, 39644
430 39644
431 39486
1703 39389

12 CFR
Proposed Rules:
Ch. I 39390
Ch. II 39390
Ch. III 39390

14 CFR
Proposed Rules:
39 (2 documents) 39392, 39394

19 CFR
201 39377
206 39377
208 39377
213 39377
214 39377
215 39377
216 39377
217 39377
218 39377
219 39377
220 39377
221 39377
222 39377
223 39377
224 39377
225 39377
226 39377
227 39377
228 39377
229 39377
230 39377
231 39377
232 39377
233 39377
234 39377
235 39377
236 39377
237 39377
238 39377
239 39377
240 39377
241 39377
242 39377
243 39377
244 39377
245 39377
246 39377
247 39377
248 39377
249 39377
250 39377
251 39377
252 39377
253 39377
254 39377
255 39377
256 39377
257 39377
258 39377
259 39377
260 39377
261 39377
262 39377
263 39377
264 39377
265 39377
266 39377
267 39377
268 39377
269 39377
270 39377
271 39377
272 39377
273 39377
274 39377
275 39377
276 39377
277 39377
278 39377
279 39377
280 39377
281 39377
282 39377
283 39377
284 39377
285 39377
286 39377
287 39377
288 39377
289 39377
290 39377
291 39377
292 39377
293 39377
294 39377
295 39377
296 39377
297 39377
298 39377
299 39377

26 CFR
Proposed Rules:
1 39397
301 39397
602 39397

28 CFR
Proposed Rules:
810 39400

32 CFR
323 39381

33 CFR
100 39382
117 (2 documents) 39382, 39383
165 (3 documents) 39383, 39384, 39386
Proposed Rules:
165 (2 documents) 39400, 39403

34 CFR
Proposed Rules:
668 39608
682 39608
685 39608

50 CFR
Proposed Rules:
219 39542

Rules and Regulations

Federal Register

Vol. 80, No. 131

Thursday, July 9, 2015

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 AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4287

RIN 0570–AA73

Biorefinery, Renewable Chemicals, and Biobased Product Manufacturing Assistance Program; Correction

AGENCY: Rural Business-Cooperative Service, Rural Utilities Service, U.S. Department of Agriculture (USDA).

ACTION: Interim final rule; correction.

SUMMARY: This document corrects an error in the interim final rule that appeared in the **Federal Register** of June 24, 2015, entitled ''Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.'' On page 36415, second column, the incorrect effective date was used and does not match with the date under the **DATES** section of the interim final rule.

DATES: This document is effective July 9, 2015.

FOR FURTHER INFORMATION CONTACT: Todd Hubbell, Energy Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Avenue SW., Washington, DC 20250–3225; telephone (202) 720–0410.

SUPPLEMENTARY INFORMATION: In FR Doc. 2015–14989 of June 24, 2015 (80 FR 36410), make the following corrections:

■ 1. On page 36415, in the second column, at the first line, remove ''July 24'' and add ''August 24'' in its place.

Dated: July 2, 2015.

Samuel Rikkers,

Acting Administrator, Rural Business-Cooperate Service.

[FR Doc. 2015–16758 Filed 7–8–15; 8:45 am]

BILLING CODE 3410–XY–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 206, 208, and 213, and 214 Through 299

Rules of General Application; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions; Investigations With Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries; Trade Remedy Assistance

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (''Commission'') amends provisions of its Rules of Practice and Procedure concerning the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance. The amendments are part of the agency's retrospective analysis of its Rules that attempts to determine whether rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

DATES: This rule is effective on August 10, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, telephone (202) 205–2000, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure.

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with provisions of section 553 of the Administrative Procedure Act (''APA'') (5 U.S.C. 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

This rulemaking is a result of the Commission's Plan for Retrospective Analysis of Existing Rules, which was published on February 14, 2012, at 77 FR 8114. The plan was issued in response to Executive Order 13579 of July 11, 2011 (76 FR 41587, July 14, 2011), and established a process under which the Commission will periodically review its significant rules to determine whether any such rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The Commission's Plan calls for the agency to seek public input on its Rules every two years.

Pursuant to the Plan, the Commission published a notice of proposed rulemaking on February 6, 2015 (80 FR 6665). This notice proposed certain amendments to the Commission's Rules. The proposed amendments concerned the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance. The notice also sought input to assist the Commission in determining whether, in addition to the proposed amendments, any of the agency's Rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The public was invited to comment both on the proposed amendments and on any of the Commission's existing Rules.

The Commission received comments in response to the notice of proposed rulemaking. By letter dated April 6, 2015, the Customs and International Trade Bar Association (CITBA) filed comments and a request to revise the

Commission's Handbook on Filing Procedures dated August 8, 2014.

In its comments, CITBA stated that the Commission's approach of requiring the filing of both paper copies and electronic copies is burdensome on submitters and causes confusion and complications for both the agency and private parties. Citing the practices of the Department of Commerce and the U.S. Court of International Trade, CITBA urged the Commission to modify its procedures and revise the Handbook to eliminate the requirement that paper copies be submitted when filing electronically. In the alternative, CITBA urged the application of a ''lag rule'' to allow parties to file paper copies the next business day after electronic filing.

The Commission discussed similar concerns in its final rulemaking notice of June 25, 2014 (79 FR 35920). That notice acknowledged that there is a trend toward greater electronic filing in agency and court proceedings. The notice concluded that, for the time being, the Commission and its staff would need to continue to rely on receiving paper copies of documents in light of the tight deadlines and voluminous factual records entailed by its investigations and other proceedings, as well as the constraints of current technology and the Commission's ability to adopt new technology given budgetary restrictions. The situation has not changed materially since that time, and therefore the Commission is not yet in a position to change its practice with respect to paper and electronic filing. The Commission will continue to monitor requirements pertaining to filing of documents as technology develops.

A comment was received from the National Archives and Records Administration's Office of Government Information Services (OGIS). OGIS commended the Commission for proposing updates to make its Freedom of Information Act (FOIA) regulations more consistent with the OPEN Government Act of 2007. OGIS recommended that the Commission expand its rulemaking to cover additional changes to the law made by that statute, including recognizing the right of FOIA requesters to seek mediation services from OGIS as a non-exclusive alternative to litigation.

OGIS suggested defining certain terms for clarity; referencing the processes for tracking and referring requests; explaining the intersection between FOIA and the Privacy Act; providing that oral requests are not permitted; adding details on what information is provided when requests are denied and how fees are charged; describing how FOIA records are preserved; and providing web links to the agency's hearing reporter and to the agency's publications. OGIS recommended that a requester not be required to specify that his or her request is made under FOIA.

The Commission is adopting most of OGIS' suggestions in the final amendments set out below. In most changes, statutory language is summarized rather than reproduced in its entirety. The Commission is not adopting the suggestion that the rules no longer require a requester to indicate that the request is made under FOIA. Agency personnel receive a substantial number of informal requests that are handled without the need to go through the FOIA process. The Commission believes that it would be neither necessary nor practical to consider all such requests as being made under FOIA.

OGIS suggested providing a web link to the agency's hearing reporter. Because the Commission obtains court reporting by contract, the identity of the reporter may change over time, and is therefore not information that the Commission considers to be appropriate for inclusion in its Rules.

OGIS suggested that the Commission provide requesters with an estimated amount of fees, including a breakdown of the fees for search, review and/or duplication. The Commission rarely finds it necessary to charge FOIA fees. When a fee is charged, the Secretary attempts to provide as much information on the fees as practicable, but a detailed estimate and breakdown may not always be possible.

The Commission received an additional comment that did not pertain to the subject matter of the notice of proposed rulemaking.

The amendments set out in this final rulemaking notice correspond to the ones that were proposed in the notice of proposed rulemaking published on February 6, 2015, with additional changes to respond to comments received. The notice of proposed rulemaking described most of the proposed amendments in a section-by-section analysis, and those amendments have not changed. With respect to the remainder of the amendments, which were prepared in response to OGIS' comments, the following sets out a section-by-section analysis.

Section 201.17 is revised to specify in paragraph (a)(5) the online location of the Commission's publications. The section is further amended to add paragraph (d) that provides information on how requests are tracked and how a requester can contact the Commission's FOIA Public Liaison. Paragraph (e) is added to clarify the relationship between FOIA and the Privacy Act. A new paragraph (f) describes the agency's procedure for referring FOIA requests to another agency. A new paragraph (g) covers records management matters, including the preservation of records relating to FOIA requests until disposition or destruction is authorized or until litigation is concluded. In section 201.18, paragraph (a) is amended to clarify that a FOIA request cannot be oral, and to describe what information is provided in a denial of a request. A new paragraph (f) provides for responses to FOIA appeals to make reference to the services offered by OGIS.

In section 201.20, paragraphs (j)(9) and (j)(10) are added to clarify the FOIA fee process by defining the terms ''requester category'' and ''fee waiver.''

In addition to publishing rules amendments in final form, the Commission expects to continue taking other steps to implement its Plan for Retrospective Analysis of Existing Rules to ensure that its Rules are kept up to date. Notably, the Commission's General Counsel has asked the Commission's Secretary, office directors, and administrative law judges for input on rules suitable for modification or elimination. The General Counsel's office will make recommendations to the Commission as necessary regarding the possible modification or elimination of existing regulations. Once an appropriate rule change has been identified, the Commission will publish a notice of proposed rulemaking and solicit public comment on the proposed change.

Regulatory Analysis of Amendments to the Commission's Rules

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, the rules are certified as not having a significant economic impact on a substantial number of small entities.

The rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because these amended

rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The Commission has determined that these amended rules do not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993).

The rules do not have Federalism implications warranting the preparation of a federalism summary impact statement under Executive Order 13132 (64 FR 43255, August 4, 1999).

The amendments are not ''major rules'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Act because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 19 CFR Parts 201, 206, 208, and 213

Administrative practice and procedure; imports; foreign trade.

For the reasons stated in the preamble, under the authority of 19 U.S.C. 1335, the United States International Trade Commission amends 19 CFR parts 201, 206, 208, and 213 as follows:

PART 201—RULES OF GENERAL APPLICATION

■ 1. Revise the authority citation for part 201 to read as follows:

Authority: 19 U.S.C. 1335; 19 U.S.C. 2482, unless otherwise noted.

■ 2. In § 201.17, revise paragraph (a)(5) and add paragraphs (d) through (g) to read as follows:

§ 201.17 Procedures for requesting access to records.

(a) * * *

(5) Copies of public Commission reports and other publications are available online at *http://www.usitc.gov/publications/by_type.htm,* or can be requested by calling or writing the Office of the Secretary. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

* * * * *

(d) *Acknowledgment.* The Secretary will provide to a requester an acknowledgment of the receipt of a request and an individualized tracking number for each request. The requester may obtain information about the status of the request and/or contact the Commission's FOIA Public Liaison by telephone (202–205–2595) or email (*foia.se.se@usitc.gov*). The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(e) *First-party requests.* The FOIA applies to third-party requests for documents concerning the general activities of the government and of the Commission in particular. When a U.S. citizen or an alien lawfully admitted for permanent residence requests access to his or her own records, *i.e.,* makes a first-party request, it is considered a Privacy Act request. Although requests are considered either FOIA requests or Privacy Act requests, the Commission processes first-party requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

(f) *Referrals.* If the Secretary refers a request or a portion thereof to another agency, the Secretary will notify the requester of the referral and the part of the request that has been referred. If feasible, the Secretary will provide the requester with a point of contact within the receiving agency regarding the referral.

(g) *Records management.* (1) The Secretary shall preserve all correspondence pertaining to requests received as well as copies of all requested records, until disposition or destruction is authorized by a General Records Schedule of the National Archives and Records Administration (NARA) or other NARA-approved records schedule.

(2) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition under a General Records Schedule or other NARA-approved records schedule.

■ 3. In § 201.18, revise paragraph (a) and add paragraph (f) to read as follows:

§ 201.18 Denials of requests, appeals from denial.

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. A denial shall be in writing and shall provide information on the exemptions that justify withholding and the amount of information withheld. The denial also shall advise the person requesting of the right to appeal to the Commission.

* * * * *

(f) A response to an appeal will advise the requester that the Office of Government Information Services offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

■ 4. In § 201.19, revise paragraph (f) to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

* * * * *

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed by a deadline set by the Secretary, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of § 201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

* * * * *

■ 5. In § 201.20, revise paragraph (j)(8) and add paragraphs (j)(9) and (10) to read as follows:

§ 201.20 Fees.

* * * * *

(j) * * *

(8) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of

'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

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

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

* * * * *

■ 6. In § 201.23, revise paragraph (e) to read as follows:

§ 201.23 Definitions.

* * * * *

(e) The term Privacy Act Officer refers to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

■ 7. In § 201.34, revise paragraph (a)(3) to read as follows:

§ 201.34 Definitions.

* * * * *

(a) * * *

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action, and where the deliberations of the Commissioners determine or result in the joint conduct or disposition of official Commission business.

* * * * *

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

■ 8. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 2451–2451a, 3351–3382, 3805 note, 4051–4065, and 4101.

■ 9. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case maybe, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof ''This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.'' A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the document shall be filed in electronic form on CD–ROM, DVD, or other portable electronic format approved by the Secretary.

PART 208—[REMOVED AND RESERVED]

■ 10. Under the authority of 19 U.S.C. 1335, remove and reserve part 208.

Subchapter D—Special Provisions

■ 11. Under the authority of 19 U.S.C. 1335, add subchapter D with the heading set forth above, and transfer part 213, consisting of §§ 213.1 through 213.6, and reserved parts 214 through 299 into it.

PART 213—TRADE REMEDY ASSISTANCE

■ 12. Revise the authority citation for part 213 to read as follows:

Authority: 19 U.S.C. 1335, 1339.

■ 13. In § 213.2, revise paragraphs (d) through (g) to read as follows:

§ 213.2 Definitions.

* * * * *

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice, provided under 19 U.S.C. 1339(b) and intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints and to seek to obtain the remedies and benefits available under the trade laws identified in § 213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in § 213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for technical assistance under this part.

(f) *Eligible small business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance under 19 U.S.C. 1339(b) in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards.* The Office has adopted for its use SBA size standards, which are the small business size standards of the Small Business Administration set forth in 13 CFR part 121.

■ 14. In § 213.3, revise paragraph (a) to read as follows:

§ 213.3 Determination of small business eligibility.

(a) *Application for technical assistance from small businesses.* An applicant for technical assistance under 19 U.S.C. 1339(b) must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office and on the Commission's Web site. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in § 213.2(a).

* * * * *

■ 15. Revise § 213.6 to read as follows:

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Information is also provided on the Commission's Web site at *http://www.usitc.gov.*

By order of the Commission.

Issued: June 29, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–16435 Filed 7–8–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID: DoD–2015–OS–0063]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: Defense Logistics Agency (DLA) is exempting records maintained in the system of records notice S240.28 DoD, Case Adjudication Tracking System (CATS) from pertinent provisions of the Privacy Act of 1974. In this rulemaking, the DLA is exempting portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: The rule will be effective on September 17, 2015 unless adverse comments are received by September 8, 2015. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. LaDonne L. White (703) 767–5045.

SUPPLEMENTARY INFORMATION: This direct final rule makes non-substantive changes to the DLA Program rules. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and counterintelligence records by the DLA and the Department of Defense.

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

Direct Final Rule and Significant Adverse Comments

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

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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

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

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

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

It has been determined that this Privacy Act rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

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

Executive Order 13132, ''Federalism''

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

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

■ 2. In § 323.6, add paragraph (j) to read as follows:

§ 323.6 Exemption rules.

* * * * *

(j) System identifier: S240.28 DoD (Specific exemption).

(1) System name: Case Adjudication Tracking System (CATS)

(2) Exemption: (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d)(1)(2)(3)(4), and (e)(1).

(3) Authority: 5 U.S.C. 552a(k)(5).

(4) Reasons: (i) From 5 U.S.C. 552a(c)(3) and (d)(1)(2)(3)(4), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the confidential source's identity not only will result in the Department breaching the express promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: June 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–16575 Filed 7–8–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0403]

RIN 1625–AA08

Special Local Regulations; Marine Events; Annual Bayview Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the annual Bayview Mackinac Race, from 9 a.m. to 5 p.m. on July 20, 2013. This special local regulated is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 100.902 will be enforced from 7 a.m. until 6 p.m. on July 18, 2015.

FOR FURTHER INFORMATION CONTACT: LTJG Matthew Stroebel, Waterway Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH at (216) 902–6060.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Bayview Mackinac Race from 7 a.m. until 6 p.m. on July 18, 2015. This Notice of Enforcement applies to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58′47″ N., longitude 082°26′0″ W.; then easterly to latitude 042°58′24″ N., longitude 082°24′47″ W.; then northward along the International Boundary to latitude 043°02′48″ N., longitude 082°23′47″ W.; then westerly to the shoreline at approximate location latitude 043°02′48″ N., longitude 082°26′48″ W.; then southward along the U.S. shoreline to latitude 042°58′54″ N., longitude 082°26′01″ W.; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and participating vessels, the Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels, permitted to transit the regulated area, will operate at no wake speed and in a manner which will not endanger participants in the event or any other craft. The rules contained above shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

In the event this special local regulation affects shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on VHF Channel 16 (156.8 MHZ).

This document is issued under the authority of 33 CFR 100.902 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port or PATCOM determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 11, 2015.

Scott E. Anderson,

Captain, U.S. Coast Guard, Acting District Prevention, Ninth Coast Guard District.

[FR Doc. 2015–16522 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0578]

Drawbridge Operation Regulation; Saugus River, Saugus, Massachusetts

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Saugus RR Bridge, across the Saugus River, mile 2.1, at Saugus, Massachusetts. This deviation is necessary to facilitate essential maintenance repairs. This deviation allows the bridge to remain in the closed position during the maintenance repairs.

DATES: This deviation is effective from 12:01 a.m. on September 12 to 11:59 p.m. on September 13, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0578] is available at *http://www.regulations.gov.* Type the docket number in the

''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, contact Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Saugus RR Bridge, mile 2.1, across Saugus River has a vertical clearance in the closed position of 7 feet at mean high water and 17 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.5.

Saugus River is transited by commercial lobstermen and recreational vessel traffic.

Keolis Commuter Railroad requested this temporary deviation from the normal operating schedule to facilitate essential maintenance repairs.

Under this temporary deviation, the Saugus RR Bridge may remain in the closed position from 12:01 a.m. on September 12, 2015 to 11:59 p.m. on September 13, 2015.

There is no alternate route for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at any time. The bridge will be able to open in the event of an emergency.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 25, 2015.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2015–16809 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0601]

Drawbridge Operation Regulations, Milford Haven; Grimstead and Gwynn's Island, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Gwynn's Island (SR#223) Draw Bridge across the Milford Haven, mile 0.5, between Grimstead and Gwynn's Island VA. This deviation is necessary to facilitate bridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 8 a.m. to 4 p.m. on July 8, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0601], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6222, email *Hal.R.Pitts@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates the Gwynn's Island (SR#223) Draw Bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5, to facilitate bridge maintenance.

Under the regular operating schedule, the Gwynn's Island (SR#223) Draw Bridge, mile 0.5, between Grimstead and Gwynn's Island, VA, opens on signal. The bridge is a swing draw bridge and has a vertical clearance in the closed position of 12 feet above mean high water.

Under this temporary deviation, the bridge will be closed to navigation from 8 a.m. to 4 p.m. on July 8, 2015.

The Milford Haven is used by a variety of vessels including small commercial fishing vessels and recreational vessels. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

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

Dated: July 2, 2015.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2015–16762 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0554]

Safety Zones; Captain of the Port Boston Fireworks Display Zone, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone in the Captain of the Port Boston Zone on the specified date and time listed below. This action is necessary to ensure the protection of the maritime public and event participants from the hazards associated with this annual recurring event. Under the provisions of our regulations, no person or vessel, except for the safety vessels assisting with the event may enter the safety zone unless given permission

from the COTP or the designated on-scene representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

DATES: The regulation for the safety zone described in 33 CFR 165.119(a)(3) will be enforced from 9:15 p.m. to 11:00 p.m. on Sunday, July 12, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.119(a)(3); Fan Pier Safety Zone. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21′23.2″ N. 071°02′26″ W. (NAD 1983), located off of the Fan Pier, South Boston, MA.

This document is issued under authority of 33 CFR 165.119 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and Broadcast Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this document, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 22, 2015.

C.C. Gelzer,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2015–16803 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0612]

RIN 1625–AA00

Safety Zone; Lake Metroparks Stand-Up Paddleboard Race; Lake Erie, Fairport Harbor, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Fairport Harbor, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Lake Metroparks Stand-Up Paddleboard Race. This temporary safety zone is necessary to protect mariners and race participants from the navigational hazards associated with a paddleboard race.

DATES: This rule will be effective from 7:45 a.m. until 12:15 p.m. on July 11, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0612]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0128, email *stephanie.m.pitts@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect race participants and spectators from the hazards associated with a paddleboard race.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 7:45 a.m. and 12:15 p.m. on July 11, 2015, a paddleboard race will be held along the shoreline of Lake Erie, Fairport Harbor, OH, directly north of Fairport Harbor Lakefront Park. It is anticipated that numerous spectator vessels will be in the immediate vicinity of the race. The Captain of the Port Buffalo has determined that such an event proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include hazardous navigation situations with less maneuverable watercraft and people falling into the water.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants and safety vessels during the Lake Metroparks Stand-Up Paddleboard Race. The safety zone will encompass all waters of Lake Erie, Fairport Harbor, OH directly north of Fairport Harbor Lakefront Park from 41° 45.5′ N. and 081° 16.5′ W. to 41° 45.8′ N. and 081° 16.5′ W. to 41° 45.9′ N. and 081° 15.6′ W. to 41° 45.6′ N. and 081° 15.6′ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the morning of July 11, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be effective, and thus subject to enforcement, for only four hours and 15 minutes early in the morning. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0612 to read as follows:

§ 165.T09–0612 Safety Zone; Lake Metroparks Stand-Up Paddleboard Race, Fairport Harbor, OH.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, Fairport Harbor, OH directly north of Fairport Harbor Lakefront Park from 41° 45.5′ N. and 081° 16.5′ W. to 41° 45.8′ N. and 081° 16.5′ W. to 41° 45.9′ N. and 081° 15.6′ W. to 41° 45.6′ N. and 081° 15.6′ W. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced on July 11, 2015 from 7:45 a.m. until 12:15 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 25, 2015.

B.W. Roche,

Captain, U. S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2015–16804 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0613]

RIN 1625–AA00

Safety Zone; The Cleveland Yachting Club Annual Regatta Fireworks Display; Lake Erie, Rocky River, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Rocky River, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Cleveland Yachting Club Annual Regatta fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display.

DATES: This rule will be enforced from 9:30 p.m. until 10:15 p.m. on July 12, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0613]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–012843, email *stephanie.m.pitts@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons

discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 9:30 p.m. and 10:15 p.m. on July 12, 2015, a fireworks display will be held on the shoreline of Lake Erie, in Rocky River, OH, in vicinity of the western point of the entrance to the Rocky River. It is anticipated that numerous vessels will be in the immediate vicinity of the launch point. The Captain of the Port Buffalo has determined that such a launch proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Cleveland Yachting Club Annual Regatta fireworks display. This zone will be effective and enforced from 9:30 p.m. until 10:15 p.m. on July 12, 2015. This zone will encompass all waters of Lake Erie; Rocky River, OH within a 280-foot radius of position 41° 29′ 25.7″ N. and 081° 50′ 18.5″ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the evening of July 12, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be effective, and thus subject to enforcement, for only 45 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0613 to read as follows:

§ 165.T09–0613 Safety Zone; Cleveland Yachting Club Regatta Fireworks Display; Lake Erie, Rocky River, OH.

(a) *Location.* This zone will encompass all waters of Lake Erie, Rocky River, OH within a 280-foot radius of position 41° 29′ 15.7″ N. and 081° 50′ 18.5″ W. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced on July 12, 2015 from 9:30 p.m. until 10:15 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 25, 2015.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2015–16805 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 80, No. 131
Thursday, July 9, 2015

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

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Proposed FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Board's regulations, the Defense Nuclear Facilities Safety Board is publishing its proposed Freedom of Information Act (FOIA) Fee Schedule Update and solicits comments from interested organizations and individual members of the public.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5:00 p.m. on or before August 10, 2015.

ADDRESSES: Comments on the proposed fee schedule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Monday through Friday (except on federal holidays), in the Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT: Mark T. Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(A)(i). Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule Updates were published in the **Federal Register** and went into effect, most recently, on June 1, 2014, 79 FR 31848. The Board's proposed fee schedule is consistent with the guidance. The components of the proposed fees (hourly charges for search and review and charges for copies of requested documents) are based upon the Board's specific cost.

Board Action

Accordingly, the Board proposes to establish the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
SCHEDULE OF FEES FOR FOIA SERVICES
[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$85.00 per hour.
Copy Charge (paper)	$.05 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Electronic Media	$5.00 per electronic media.
Copy Charge (audio and video cassette)	Actual commercial rates.
Duplication of DVD	$25.00 for each individual DVD; $16.50 for each duplicate DVD.
Copy Charge for large documents (*e.g.,* maps, diagrams)	Actual commercial rates.

Dated: June 30, 2015.

Mark T. Welch,

General Manager.

[FR Doc. 2015–16756 Filed 7–8–15; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket ID FFIEC–2014–0001]

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1510]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: Office of the Comptroller of the Currency (''OCC''), Treasury; Board of Governors of the Federal Reserve System (''Board''); and Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Notice of outreach meeting.

SUMMARY: The OCC, Board, and FDIC (''Agencies'') announce the fourth in a series of outreach meetings on the Agencies' interagency process to review their regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''). The particular focus of this meeting is the effects of the Agencies' regulations on rural banks and their communities.

DATES: An outreach meeting will be held in Kansas City, Missouri on Tuesday, August 4, 2015, beginning at 9 a.m. Central Daylight Time (CDT). Online registrations will be accepted through July 27, 2015, or until all seats are filled, whichever is earlier. If seats are available after the close of online registration, individuals may register in person at the Federal Reserve Bank of Kansas City on the day of the meeting. Additional outreach meetings are scheduled for October 19, 2015, in Chicago, Illinois, and December 2, 2015, in Washington, DC.

ADDRESSES: The Agencies will hold the August 4, 2015, outreach meeting at the Federal Reserve Bank of Kansas City, 1 Memorial Drive, Kansas City, Missouri 64198. Live video of this meeting will be streamed at *http://egrpra.ffiec.gov/.* Participants attending in person should register at *http://egrpra.ffiec.gov/outreach/outreach-index.html.*

In addition, to enhance participation by bankers, consumer and community groups, and other interested persons who are located in various rural areas, interested persons anywhere in the country will have the opportunity to view and participate in the meeting online using their computers. These participants may provide comments following each panel presentation or at the conclusion of the meeting, as time permits. Members of the public watching online will be able to submit written comments using the text chat feature and verbal comments using the audio feature of the webcast. A toll-free telephone number also will be provided for members of the public who would like only to listen to the meeting, and who may choose later to submit written comments. Information regarding these additional participation options is described in the meeting details section for the Kansas City meeting at *http://egrpra.ffiec.gov/outreach/outreach-meeting-details-kansascity.html.*

Any interested individual may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html.*

On this site, click ''Submit a Comment'' and follow the instructions. Alternatively, comments may be submitted through the Federal eRulemaking Portal ''Regulations.gov'' at: *http://www.regulations.gov.* Enter ''Docket ID FFIEC–2014–0001'' in the Search Box, click ''Search,'' and click ''Comment Now.'' Those who wish to submit their comments by an alternate means may do so as indicated by each agency below.

OCC:

The OCC encourages commenters to submit comments through the Federal eRulemaking Portal, Regulations.gov, in accordance with the previous paragraph. Alternatively, comments may be emailed to *regs.comments@occ.treas.gov* or sent by mail to Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, 400 7th Street SW., Washington, DC 20219. Comments also may be faxed to (571) 465–4326 or hand delivered or sent by courier to 400 7th Street SW., Washington, DC 20219. For comments submitted by any means other than Regulations.gov, you must include ''OCC'' as the Agency name and ''Docket ID FFIEC–2014–0001'' in your comment.

In general, the OCC will enter all comments received into the docket and publish them without change on Regulations.gov. Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not include any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the OCC at 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect or photocopy comments. You may make an appointment by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening.

Board:

The Board encourages commenters to submit comments regarding the Board's regulations by any of the following methods:

- Agency Web site*: http://www.federalreserve.gov/apps/foia/proposedregs.aspx.* Follow the instructions for submitting comments on the Agency Web site.
- Federal eRulemaking Portal, in accordance with the directions above.
- Email: *regs.comments@federalreserve.gov.* Include ''EGRPRA'' and Docket No. R–1510 in the subject line of the message.
- FAX: (202) 452–3819.
- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal ReserveSystem, 20th Street and Constitution Avenue NW., Washington, DC 20551.

In general, the Board will enter all comments received into the docket and publish them without change on the Board's public Web site, *www.federalreserve.gov;* Regulations.gov; and *http://egrpra.ffiec.gov.* Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not enclose any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the

Board in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may make an appointment by calling (202) 452–3000. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening.

FDIC:

The FDIC encourages commenters to submit comments through the Federal eRulemaking Portal, Regulations.gov, in accordance with the directions above. Alternatively, you may submit comments by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web site.
- Email: *Comments@FDIC.gov.* Include ''EGRPRA'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. (EDT).

The FDIC will post all comments received to *http://www.fdic.gov/regulations/laws/federal* without change, including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. (EDT) on business days. Paper copies of public comments may be ordered from the Public Information Center by calling (877) 275–3342.

FOR FURTHER INFORMATION CONTACT: OCC: Heidi M. Thomas, Special Counsel, (202) 649–5490; Rima Kundnani, Attorney, (202) 649–5545; for persons who are deaf or hard of hearing, TTY (202) 649–5597.

Board: Kevin Wilson, Financial Analyst, (202) 452–2362; Claudia Von Pervieux, Counsel (202) 452–2552; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

FDIC: Ruth R. Amberg, Assistant General Counsel, (202) 898–3736; for persons who are deaf or hard of hearing, TTY 1–800–925–4618.

SUPPLEMENTARY INFORMATION: EGRPRA [1] directs the Agencies, along with the Federal Financial Institutions Examination Council (Council), not less frequently than once every ten years, to conduct a review of their regulations to identify outdated or otherwise unnecessary regulations imposed on insured depository institutions. As part of this review, the Agencies are holding a series of six outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to senior management and staff of the Agencies on any of 12 specific categories of the Agencies' regulations, as further described below. The Agencies held the first of these outreach meetings on December 2, 2014, in Los Angeles, California; the second outreach meeting on February 4, 2015, in Dallas, Texas; and the third outreach meeting on May 4, 2015, in Boston, Massachusetts. Recorded videos and transcripts of these outreach meetings are available on the EGRPRA Web site at *http://egrpra.ffiec.gov/outreach/outreach-index.html.*

The fourth outreach meeting will be held on August 4, 2015, in Kansas City, Missouri, and will be streamed live at *http://egrpra.ffiec.gov/.* Senior agency staff from the Board, OCC, and FDIC are scheduled to attend. The meeting will consist of panels of bankers and consumer and community groups who will present particular issues. As the fourth outreach meeting will focus on the effects of banking regulations on rural banks and their communities, the Agencies have requested that panelists give attention to these issues. There will be limited time after each panel for comments from meeting attendees and online participants. In addition, there will be a session at the end of the meeting during which audience members and online participants may present views on any of the regulations under review. The Agencies reserve the right to limit the time of individual commenters, if needed, in order to accommodate the number of persons desiring to speak.

Comments made by panelists, audience members, and online participants at this meeting will be part of the public record. Audience members who do not wish to comment orally may submit written comments at the meeting. As noted above, any interested person may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html* or directly to the Agencies through any of the other manners specified above.

All persons wanting to participate in person should register for the Kansas City outreach meeting at *http://egrpra.ffiec.gov/outreach/outreach-index.html.* Because of space constraints, on-site attendance will be limited. Online registrations will be accepted through July 27, 2015, or until all seats are filled, whichever is earlier. If seats are available, individuals may register in person at the Federal Reserve Bank of Kansas City on the day of the meeting. Individuals do not need to register to view the live-stream broadcast.

We note that the meeting will be recorded and publicly webcast in order to increase education and outreach. By participating in the meeting, either in person or online, you consent to appear and to be heard in such recordings.

Additional Background on EGRPRA

Section 2222 of EGRPRA directs the Agencies, along with the Council, to conduct a review of their regulations not less frequently than once every ten years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the Agencies are required to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome. The statute requires the Agencies to publish in the **Federal Register** a summary of the comments received, identifying significant issues raised and commenting on these issues. The statute also directs the Agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, section 2222 requires the Council, of which the Agencies are members, to submit a report to Congress that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report also must include an analysis of whether the Agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

For purposes of this review, the Agencies have grouped their regulations into 12 categories: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. On June 4, 2014, the Agencies published a **Federal Register** notice announcing the start of the EGRPRA review process

[1] Public Law 104–208 (1996), 110 Stat. 3009–414, codified at 12 U.S.C. 3311.

and also asking for public comment on three of these categories—Applications and Reporting; Powers and Activities; and International Operations regulations.[2] In that notice the Agencies published a chart, listing their regulations in the 12 categories included in the EGRPRA review. On February 13, 2015, the Agencies published a second **Federal Register** notice asking for public comment on three additional categories—Banking Operations; Capital; and the Community Reinvestment Act.[3] The comment period for the second **Federal Register** notice closed on May 14, 2015. On June 5, 2015, the Agencies published a third **Federal Register** notice asking for public comment on three additional categories—Consumer Protection; Directors, Officers and Employees; and Money Laundering.[4] The comment period for the current notice will close on September 3, 2015.

The third **Federal Register** notice also announced the Agencies' decision to expand the scope of the EGRPRA review in order to be as inclusive as possible. The Agencies will now take comment on all of their regulations issued in final form up to the date that they publish their last EGRPRA notice for public comment. The Agencies have included a separate chart in the third notice that lists the newly issued rules included in the review.

Dated: June 29, 2015.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 29, 2015.

Robert deV. Frierson,

Secretary of the Board.

Dated: June 30, 2015.

Federal Deposit Insurance Corporation by

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–16760 Filed 7–8–15; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[2] 79 FR 32172.

[3] 80 FR 7980.

[4] 80 FR 32046.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2459; Directorate Identifier 2015–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by reports of fire and smoke at the engine aft pylon area resulting from fuel leakage caused by a damaged O-ring in the fuel coupling attached to the wing front spar. This proposed AD would require applying sealant to fill the gap between the lower wing panels adjacent to the strut aft vapor barrier. We are proposing this AD to prevent fire and smoke at the engine aft pylon area in the event of a fuel leak, which could cause personal injury during ground operations. A fire spreading back and up to the aft fairing pylon can result in an uncontrolled fire in the strut and ignite the fuel tank.

DATES: We must receive comments on this proposed AD by August 24, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2459.

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–2015–2459; 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 Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–2459; Directorate Identifier 2015–NM–002–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 because of those comments.

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

Discussion

We received reports of fire and smoke at the engine aft pylon area resulting from fuel leakage caused by a damaged O-ring in the fuel coupling attached to the wing front spar. The fuel was captured by the fuel coupling rubber boot and was discharged into the flammable fluid leakage zone of the strut-to-wing cavity, as intended. However, the fuel did not follow its

intended drain paths into the aft strut and lower wing panel drains, but instead followed an unintended drain path through an unsealed gap between the lower wing panels above the strut aft vapor barrier. The leaking fuel then followed gaps and seams in the aft fairing structure to the outside of the strut fairing side panels, ignited after contact with the hot engine exhaust heat shield, and caused a fire and smoke. We are proposing this AD to prevent fire and smoke at the engine aft pylon area in the event of a fuel leak, which could cause personal injury during ground operations. A fire spreading back and up to the aft fairing pylon can result in an uncontrolled fire in the strut and ignite the fuel tank.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–54–0035, dated October 30, 2014. The service information describes procedures for applying sealant to fill the gap between the lower wing panels adjacent to the strut aft vapor barrier. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Explanation of "RC" Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an alternative method of compliance (AMOC) is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

Costs of Compliance

We estimate that this proposed AD affects 196 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
Sealant application	3 work-hours × $85 per hour = $255	$0	$255	$49,980

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–2459; Directorate Identifier 2015–NM–002–AD.

(a) Comments Due Date

We must receive comments by August 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–54–0035, dated October 30, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by reports of fire and smoke at the engine aft pylon area resulting from fuel leakage caused by a damaged O-ring in the fuel coupling attached to the wing front spar. We are issuing this AD to prevent fire and smoke at the engine aft pylon area in the event of a fuel leak, which could cause personal injury during ground operations. A fire spreading back and up to the aft fairing pylon can result in an uncontrolled fire in the strut and ignite the fuel tank.

(f) Compliance

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

(g) Sealant Application

Within 1,875 days after the effective date of this AD, apply sealant to fill the gap between the lower wing panels adjacent to the strut aft vapor barrier, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0035, dated October 30, 2014.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) 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.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(3)(i) and (h)(3)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(4) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.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.

Issued in Renton, Washington, on June 30, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16766 Filed 7–8–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2460; Directorate Identifier 2014–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2010–26–10, which applies to certain The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F series airplanes. AD 2010–26–10 currently requires repetitive inspections for cracking of the lap joints, modification of certain lap joints, and certain post-repair inspections of the lap joints. Since we issued AD 2010–26–10, an evaluation by the design approval holder (DAH) has indicated that certain lap joints are subject to widespread fatigue damage (WFD). This proposed AD would add new repetitive post-modification inspections for cracking in the lap joints, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking in certain lap joints, which could result in rapid depressurization and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 24, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, 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: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2460.

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–2015–2460; 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 Office

(phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–2460; Directorate Identifier 2014–NM–163–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 because of those comments.

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

Discussion

On December 13, 2010, we issued AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), for certain Model 747–200C, –200F, –400, –400D, and –400F series airplanes. AD 2010–26–10 requires repetitive inspections for cracking of the lap joints, modification of certain lap joints and certain post-repair inspections of the lap joints. AD 2010–26–10 resulted from a structural review of affected skin lap joints for WFD. We issued AD 2010–26–10 to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization and consequent reduced structural integrity of the airplane.

Widespread Fatigue Damage

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

Actions Since AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), Was Issued

Since we issued AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), an evaluation by the DAH has indicated that certain lap joints are subject to WFD.

Related Service Information Under 1 CFR part 51

We reviewed Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014. The service information describes procedures for body skin lap joint inspections and modifications in sections 41, 42, and 43. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), this proposed AD would retain all of the requirements of AD 2010–26–10. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (g) and (h) of this proposed AD. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between this Proposed AD and the Service Bulletin.'' Refer to this service information for details on the procedures and compliance times.

Difference Between This Proposed AD and the Service Bulletin

Although Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization

Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 120 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
Pre–modification inspections [retained action from AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010)].	Up to 675 work-hours, = up to $57,375.	$0	Up to $57,375 per inspection cycle.	Up to $6,885,000 per inspection cycle.
Modification [retained action from AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010)].	Up to 5,819 work-hours × $85 per hour = up to $494,615.	0	Up to $494,615	Up to $59,353,800.
New proposed post-modification inspections.	Up to 105 work-hours × $85 per hour = up to $8,925.	0	Up to $8,925 per inspection cycle.	Up to $1,071,000 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We have 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 that the 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 removing Airworthiness Directive (AD) 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), and adding the following new AD:

The Boeing Company: Docket No. FAA–2015–2460; Directorate Identifier 2014–NM–163–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by August 24, 2015.

(b) Affected ADs

This AD replaces AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010).

(c) Applicability

This AD applies to The Boeing Company Model 747–200C, –200F, –400, –400D, and –400F series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain lap joints are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking in certain lap joints, which could result in rapid depressurization and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Lap Joint Inspections

At the applicable time specified in Table 1 and Table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, except as required by paragraph (j)(1) of this AD: Do eddy current inspections for cracks in the skin of the lap joints, and do all applicable repairs, in accordance with the Accomplishment Instructions of Boeing

Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, except as required by paragraph (j)(2) of this AD. Do all applicable repairs before further flight. Repeat the applicable inspections thereafter at intervals not to exceed those specified in Table 1 and Table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014

(h) Lap Joint Modification

At the applicable time specified in Tables 2, 4, 5, and 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, except as required by paragraph (j)(1) of this AD: Modify the applicable lap joints, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, except as required by paragraph (j)(2) of this AD. Accomplishment of the modification required by this paragraph terminates the repetitive inspections required by paragraph (g) of this AD for the length of the modified lap joint.

(i) Lap Joint Post-Modification Inspections

At the applicable time specified in Tables 7, 8, 9, and 10 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, except as required by paragraph (j)(1) of this AD: Do the applicable inspections specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014. Repeat the applicable inspections thereafter at the applicable times specified in Tables 7, 8, 9, and 10 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014. If any crack is found during any inspection, repair before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(1) For airplanes identified as Groups 2 through 5 and 8 through 10 in Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014: Internal detailed and surface high frequency eddy current (HFEC) inspections for any crack in the skin or internal doubler.

(2) For airplanes identified as Groups 6, 11, and 19 in Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014: External detailed and low frequency eddy current inspections of the upper and lower skin panels for cracking, external detailed and HFEC inspections of the doubler for cracking, and internal detailed and HFEC inspections of the upper and lower skin panels for cracking (for airplanes with a stringer 6 lap joint modification installed between STA 340 and STA 400 as specified in Boeing Service Bulletin 747–53–2272); or internal detailed and surface HFEC inspections for any crack in the skin or internal doubler (for airplanes with lap joints modified as specified in Boeing Alert Service Bulletin 747–53A2499.)

(3) For airplanes identified as Groups 1, 7, and 12 through 18 in Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014: Internal detailed and surface HFEC inspections for any crack in the skin or internal doubler.

(j) Exceptions to Service Bulletin Procedures

(1) Where Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, specifies a compliance time ''after the Revision 3 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2499, Revision 3, dated July 15, 2014, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Credit for Previous Actions

Actions done before the effective date of this AD using the service information identified in paragraph (k)(1) or (k)(2) of this AD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

(1) Boeing Alert Service Bulletin 747–53A2499, Revision 1, dated October 30, 2008, which is not incorporated by reference in this AD.

(2) Boeing Alert Service Bulletin 747–53A2499, Revision 2, dated August 12, 2010, which was incorporated by reference in AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010).

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2010–26–10, Amendment 39–16549 (75 FR 81427, December 28, 2010), are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) this AD.

(m) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 29, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16763 Filed 7–8–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[REG–103281–11]

RIN 1545–BK06

Tax on Certain Foreign Procurement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–103281–11) that was published in the **Federal Register** on Wednesday, April 22, 2015 (80 FR 22449), the proposed regulations are relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts.

DATES: Written or electronic comments and request for a public hearing for the notice of proposed rulemaking at 80 FR 22449, April 22, 2015, are still being accepted and must be received by July 21, 2015.

FOR FURTHER INFORMATION CONTACT: Kate Hwa, at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 5000C of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–103281–11) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, notice of proposed rulemaking, that is the subject of FR Doc. 2015–09383, is corrected as follows:

■ 1. On page 22452, in the preamble, second column, under the paragraph heading ''A. Increase Amount Deducted and Withheld Under Chapter 3'', the eleventh line from the top of the paragraph, the language ''annual or periodical income (FDAP).'' is corrected to read ''annual or periodical income.''.

§ 1.5000C–2 [Corrected]

■ 2. On pages 22460 through 22461, paragraph (d)(7), the ''Section 5000C Certificate'' is corrected to read as follows:

Section 5000C Certificate	
Part I Identification of Foreign Contracting Party	
1 Name of foreign contracting party	**2** Country of organization if applicable (do not abbreviate)
3 Permanent residence address (street, apt. no. or rural route). Do not use P.O. Box or in-care-of address	
City or town, state or province (include postal code, if applicable)	Country (do not abbreviate)
4 Mailing address (if different from above)	
City or town, state or province (include postal code, if applicable)	Country (do not abbreviate)
5 U.S. TIN, if any	**6** Contract/reference number (if known)
7 Name and address of the acquiring agency	
City or town, state or province (including the postal code, if applicable)	Country (do not abbreviate)
Part II Exemption Based on an International Agreement (If Applicable)	
8 ☐ Check this box if claiming relief from the tax under section 5000C pursuant to an international agreement with the United States (such as a qualified income tax treaty), and complete Part IV.	
Part III Exemption Based on an International Procurement Agreement or because Goods/Services Produced/Performed in the U.S.	
9 ☐ Check this box if identifying specific exempt and nonexempt amounts (for example, by CLIN) and skip Lines 10 through 14 and complete Part IV, Line 15.	**10** Total Contract Price or Estimated Total Contract Price
11 Nonexempt Amount or Estimated Nonexempt Amount	**12** Contract Ratio (Line 11 over Line 10)

Part IV	Explanation (Complete if Part II or Part III Is Applicable)

13 If you checked the box in Part II, state the name of the agreement and specific provision relied upon (for example, the nondiscrimination article of a qualified income tax treaty); and the basis on which you are entitled to the benefits of that provision (for example, because you are a corporation organized in a foreign country with which the United States has a qualified income tax treaty that covers all nationals). (Use additional sheets as necessary.)

14 If you completed Part III, but did not check the box on Line 9, state the relevant countries where the goods are manufactured or produced or services provided and the international procurement agreements relied upon, if relevant. If applicable, explain the method relied upon to allocate the total contract price between exempt and nonexempt amounts. (Use additional sheets as necessary.)

15 If you checked the box on Line 9, provide an explanation for each item by stating the relevant countries where the goods are manufactured or produced or services provided and the international procurement agreements relied upon, if relevant. If applicable, explain the method relied upon to allocate the total contract price between exempt and nonexempt amounts. For example, you may attach a spreadsheet listing the various contract line items with an explanation for the treatment of each line item as exempt or nonexempt. If the contract includes details necessary to complete this section (such as exempt or nonexempt amounts by contract line item), you may incorporate by reference the relevant information in the explanation. (Use additional sheets as necessary.)

Part V	Certificate

Under penalties of perjury, I declare that I have examined the information on this certificate (and in the contract, if relevant) and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

1 I am the foreign person (or am authorized to sign on behalf of the foreign person) identified in Line 1 above,

2 I am not acting as an agent or nominee for another foreign person,

3 I agree to pay an amount equal to any tax due under section 5000C that the acquiring agency does not withhold under section 5000C and pay any applicable penalties and interest,

4 I acknowledge and understand the rules in §1.5000C-4 relating to procedural obligations under section 5000C, and

5 I have not engaged in any transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C as defined in §1.5000C-5.

Sign Here ►	_____ _/_/_ _____ Signature of Foreign Person (or Authorized Representative) Date Capacity to Act

§ 1.5000C–3 [Corrected]

■ 3. On page 22462, second column, the seventeenth and eighteenth lines of paragraph (b)(2), the language ''publications prescribed by the Internal Revenue Service (IRS), acquiring'' is corrected to read ''publications prescribed by the IRS, acquiring''.

■ 4. On page 22462, third column, the fourteenth line from the bottom of paragraph (c)(1), the language ''a copy of Form 1042, Form 1042–S, the'' is corrected to read ''a copy of Form 1042, Forms 1042–S, the''.

■ 5. On page 22462, third column, the seventh line from the bottom of paragraph (c)(1), the language ''to file Form 1042 must retain any'' is corrected

to read ''to file Form 1042 must retain all''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015–16761 Filed 7–8–15; 8:45 am]

BILLING CODE 4830–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 810

RIN 3225–AA00

Community Supervision: Administrative Sanctions and GPS Monitoring as a Supervision Tool; Correction

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule; correction.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is correcting the authority citation in a proposed rule published May 22, 2015, regarding amendments to its current rule regarding the conditions of release requirements for offenders under CSOSA supervision.

FOR FURTHER INFORMATION CONTACT: Stephanie Carrigg, Assistant General Counsel, at (202) 220–5352 or by email at *stephanie.carrigg@csosa.gov.* Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

Correction

In proposed rule FR Doc. 2015–12204, published on May 22, 2015 (80 FR 29569), make the following correction. On page 29570, in the first column, correct both instances of the ''Authority'' to read as follows:

Authority: Pub. L. 105–33, 111 Stat. 712 (D.C. Code 24–133(b)(2)(B)).

Dated: June 30, 2015.

Diane Bradley,

Assistant General Counsel.

[FR Doc. 2015–16007 Filed 7–8–15; 8:45 am]

BILLING CODE 3129–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0509]

RIN 1625–AA00

Safety Zone; Incredoubleman Triathlon, Henderson Bay, Lake Ontario, Sackets Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on Henderson Bay, Lake Ontario, Sackets Harbor, NY for a triathlon event. This safety zone is necessary to protect swimmers from vessels operating in the area. This safety zone would restrict vessels from a portion of Lake Ontario during the swimming portion of the Incredoubleman Triathlon event.

DATES: Comments and related materials must be received by the Coast Guard on or before August 10, 2015. Requests for public meetings must be received July 29, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0509 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Delivery:* At the same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Amanda Garcia, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2015–0509), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0509] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this notice of proposed rulemaking.

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 the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to

http://www.regulations.gov, type the docket number (USCG–2015–0509) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. If you want us to hold a public meeting, submit your request by July 29, 2015, using one of the methods specified under **ADDRESSES**. Any subsequent meetings held where public comment is sought to aid this rulemaking would be held at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis and authorities for this rulemaking are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 7:45 a.m. until 9:30 a.m. on September 12 and 13, 2015, a triathlon/swimming race will be held offshore of Henderson Bay, Lake Ontario, Sackets Harbor, NY. The Captain of the Port Buffalo has determined that a large scale swimming event on a navigable waterway will pose a significant risk to participants and the boating public.

D. Discussion of Proposed Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo proposes to establish a safety zone that will ensure the safety of participants, spectators, and vessels during the IncreDoubleman Triathlon event. The proposed safety zone would be effective and enforced from 7 a.m. until 10 a.m. on September 12 and 13, 2015. The proposed zone would encompass all areas on the waters of Henderson Bay, Lake Ontario, Sackets Harbor, NY within the following positions: 43°53′52.58″ N. and 076°7′40.19″ W., then Northwest to 43°54′4.44″ N. and 076°7′43.89″ W., then Southwest to 43°53′57.19″ N. and 076°8′19.19″ W., then Southeast to 43°53′52.58″ N. and 076°7′40.19″ W. (NAD 83).

Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this proposed rule will be relatively small and enforced for relatively short time. Also, the proposed safety zone is designed to minimize its impact on navigable waters.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, 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. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Ontario near Sackets Harbor, NY between 7 a.m. to 1 a.m. on September 12 and 13, 2015.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be enforced for only 3 hours early in the day for two days. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that comment on this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this

rulemaking does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0509 to subpart F under the undesignated center heading Ninth Coast Guard District to read as follows:

§ 165.T09–0509 Safety Zone; Incredoubleman Triathlon, Henderson Bay, Lake Ontario, Sackets Harbor, NY.

(a) *Location.* The following area is a safety zone: All areas on the waters of Henderson Bay, Lake Ontario, Sackets Harbor, NY within the following positions: 43°53′52.58″ N. and 076°7′40.19″ W., then Northwest to 43°54′4.44″ N. and 076°7′43.89″ W., then Southwest to 43°53′57.19″ N. and 076°8′19.19″ W., then Southeast to 43°53′52.58″ N and 076°7′40.19″ W. (NAD 83).

(b) *Enforcement period.* This section will be enforced from 7 a.m. until 10 a.m. on September 12 and 13, 2015.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 15, 2015.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2015–16806 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0051]

RIN 1625–AA11

Regulated Navigation Area; Ice Covered Waterways in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) on the navigable waters of the Fifth Coast Guard District. This RNA will allow the Coast Guard to impose and enforce restrictions on vessels operating within the RNA where a threat to navigation exists due to ice covered waterways. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce.

DATES: Comments and related material must be received by the Coast Guard on or before October 7, 2015.

Requests for public meetings must be received by the Coast Guard on or before August 10, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2014–0051. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Tiffany Johnson, Fifth Coast Guard District Waterways Management Branch, U.S. Coast Guard; telephone 757–398–6516, email *Tiffany.A.Johnson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
RNA Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2015–0051 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2015–0051 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is the first publication for this proposed action.

C. Basis and Purpose

The legal basis for this rulemaking is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and DHS Delegation No. 0170.1. Under these authorities the Coast Guard may establish a Regulated Navigation Area in

defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. The purpose of this RNA is to mitigate the potential threat ice poses to the maritime public in the Fifth Coast Guard District by implementing control measures on vessels of certain characteristics.

During an average or severe winter, the presence of ice in waterways presents numerous hazards to vessels. Such hazards include vessels becoming beset or dragged off course, sinking or grounding and creating hazards to navigation. The presence of ice in a waterway may hamper a vessel's ability to maneuver. Visual aids to navigation may become submerged, destroyed, or moved off station, potentially misleading the vessel operator to unsafe waters. Ice abrasions and ice pressure may compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach. Vessels operating in these conditions could introduce hazards to the maritime public and environment.

To ensure navigation and vessel safety, the cognizant COTP will impose navigation restrictions through this regulation in ice covered waters. Ice generally begins to form in the northern area of the Fifth Coast Guard District between late December and early January, and later in the southern area. Once ice buildup begins, it may affect the transit of large ocean-going vessels. Air and water temperatures typically return to levels that are no longer favorable for ice formation in early to mid-March.

D. Discussion of the Proposed Rule

To address the aforementioned hazards, this proposed rule will establish an RNA encompassing all navigable waters of the United States, as that term is used in 33 CFR 2.36, within the geographic boundaries of the Fifth Coast Guard District, as defined in 33 CFR 3.25–1. The Coast Guard will implement control measures on vessels with certain characteristics in waterways when necessary to safeguard people and vessels from the hazards associated with ice. As indicated above, the Coast Guard expects to control marine traffic in certain waterways if ice conditions present hazards that threaten safe navigation.

Whenever it is determined that control measures are necessary, the cognizant COTP will notify the maritime community of any limitations, restrictions, or prohibitions in place affecting vessels that intent to transit through the RNA. Notification will be through a variety of means, including via a variety of means, the Homeport Web site, Marine Safety Information Bulletins, email notifications and Broadcast Notice to Mariners. When determining if vessels may transit through the RNA, the Coast Guard will consider the prevailing ice conditions, hull material types, horsepower, volume of vessel traffic and any other relevant factors. Vessels capable of operating in the prevailing ice condition will be allowed to enter into or transit within the RNA as specified by the cognizant COTP.

E. Regulatory Analyses

We developed this rulemaking after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this proposed regulation could limit or prevent traffic from transiting certain waterways in the Fifth Coast Guard District, the effect of this proposed regulation will not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during the effective period. The Coast Guard anticipates only having to implement control measures in certain waterways within the RNA for limited durations of time. Vessel traffic capable of operating in such conditions will be allowed to enter into or transit within the RNA as specified by the cognizant COTP. The cognizant COTP will make notifications of the regulated area to the maritime public via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter into or transit within the RNA during times when ice formation is favorable. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the same reasons described under Regulatory Planning and Review.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary RNA. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.550 to read as follows:

§ 165.550 Regulated Navigation Area; Ice Covered Waterways within the Fifth Coast Guard District.

(a) *Regulated area.* The following area is a Regulated Navigation Area (RNA): The navigable waters of the Fifth Coast Guard District, as described in 33 CFR 3.25.

(b) *Definitions.* As used in this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the cognizant Captain of the Port (COTP) to assist in enforcing the RNA area described in paragraph (a) of this section.

(2) *Official patrol vessel* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessel(s) assigned and authorized by cognizant COTP.

(3) *Horsepower* means the total maximum continuous shaft horsepower of a vessel's main propulsion machinery.

(4) *Cognizant COTP* means the Coast Guard Captain of the Port with jurisdiction over the geographic area affected.

(c) *Regulations.* (1) The general regulations governing Regulated Navigation Areas found in 33 CFR 165.10, 165.11, and 165.13, including the Regulated Navigation Area described in paragraph (a) and the following regulations, apply.

(2) Except as provided in paragraph (c)(3) of this section, vessels of certain characteristics are not authorized to enter or transit within this RNA when the cognizant COTP determines prevailing ice conditions threaten the navigational safety of vessels. The cognizant COTP or designated representative will evaluate local marine environment conditions prior to issuing any control measures regarding vessel navigation. Control measures that may be implemented include, but are not limited to, vessel restrictions associated with horsepower and hull material type, and the requirement to participate in vessel convoys.

(3) Any deviation from the requirements set forth by the cognizant COTP per paragraph (c)(2) of this section must be authorized by the Coast Guard District Commander, the cognizant COTP, or a designated representative. Vessels not meeting the requirements established by the cognizant COTP that are granted permission to enter or transit the RNA must do so in accordance with the directions provided by the cognizant COTP or designated representative. To request permission to transit the regulated navigation area, the COTP or COTP representative can be contacted on VHF–FM channel 16 (156.8 MHZ) or via telephone, as follows:

(i) COTP Delaware Bay: 215–271–4940;

(ii) COTP Baltimore: 410–576–2693;

(iii) COTP Hampton Roads: 757–483–8567;

(iv) COTP North Carolina: 910–343–3882.

(4) The cognizant COTP will notify the public of restrictions via the methods described in 33 CFR 165.7, through the Coast Guard Homeport Web

site, Broadcast Notice to Mariners, Marine Safety Information Bulletins, and through email listservs. The Coast Guard vessels enforcing this RNA can be contacted on marine band radio VHF–FM channel 16 (156.8 MHZ). The cognizant COTP and his or her designated representatives can be contacted at telephone number listed in paragraph (c)(3)(i) through (iv) of this section. Additionally, official patrol vessels may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA.

(5) The Cognizant COTP or a designated representative will notify the public of any changes in the status of this RNA via broadcast notices to mariners on marine band radio VHF–FM channel 22A (157.1 MHZ) or VHF–FM channel 16 (156.8 MHZ).

Dated: June 2, 2015.

Robert J. Tarantino,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2015–16808 Filed 7–8–15; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 80, No. 131

Thursday, July 9, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne and Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne and Mariposa Counties Resource Advisory Committee (RAC) will meet in Sonora, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. 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/main/pts/specialprojects/racweb.*

DATES: The meeting will be held August 17, 2015, from 12:00 p.m. to 3:00 p.m.

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 City of Sonora Fire Department, 201 South Shephard Street, Sonora, 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 the Stanislaus National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Beth Martinez, RAC Coordinator, by phone at 209–532–3671, extension 321; or via email at *bethmartinez@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.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide RAC updates, and
2. Review project proposal submittals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by at least a week in advance to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Beth Martinez, RAC Coordinator, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; by email to *bethmartinez@fs.fed.us,* or via facsimile to ATTN: Beth Martinez at 209–533–1890.

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: July 1, 2015.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2015–16769 Filed 7–8–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa Uncompahgre Gunnison Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Grand Mesa Uncompahgre Gunnison (GMUG) Resource Advisory Committee (RAC) will meet in Delta, Colorado. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/allRAcs.*

DATES: The meeting will be held August 26, 2015, at 1:00 p.m. to 4:30 p.m.

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 Grand Mesa, Uncompahgre and Gunnison National Forests (NF), Forest Headquarters, North Spruce Conference Room, 2250 Highway 50, Delta, Colorado.

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 GMUG NF Forest Headquarters Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, RAC Coordinator by phone at 970–874–6717 or via email at *lloupe@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.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. The RAC will meet to conduct RAC business,
2. Review and discuss project proposals, and
3. Make recommendations for projects to fund from Title II monies for Garfield,

Gunnison, Mesa and Montrose counties, Colorado.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 6, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lee Ann Loupe, RAC Coordinator, 2250 Highway 50, Delta, Colorado 81416; by email to *lloupe@fs.fed.us,* or via facsimile to 970–874–6686.

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: July 1, 2015.

Scott G. Armentrout,

Forest Supervisor.

[FR Doc. 2015–16802 Filed 7–8–15; 8:45 am]

BILLING CODE 3411–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, July 27–29, 2015 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, July 27, 2015

10:00–12:30 p.m. Ad Hoc Committee Meetings: Closed to Public

Tuesday, July 28, 2015

9:30–10:00 a.m. Budget Committee
10:00–11:00 Technical Programs Committee
11:00–Noon Planning and Evaluation Committee
1:30–2:30 p.m. Ad Hoc Committee on Design Guidance
2:30–4:00 Ad Hoc Committee on Frontier Issues: Real Time Text Demonstration

Wednesday, July 29, 2015

9:30–11:30 a.m. Rail Vehicles Access Advisory Committee Report Presentation
1:30–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on Wednesday, July 29, 2015 from 1:30 to 3:00 p.m., the Access Board will consider the following agenda items:

- Approval of the draft March 11, 2015 meeting minutes (vote)
- Ad Hoc Committee Reports: Information and Communications Technologies; Self-Service Transaction Machines; Public Rights-of-Way and Shared Use Paths; Transportation Vehicles; Passenger Vessels; Medical Diagnostic Equipment; Frontier Issues; and Design Guidance
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Guest Speakers: Maria Town, Associate Director, White House Office of Public Engagement and Marilyn Golden, author of the NCD report, ''Transportation Update: Where We've Gone and What We've Learned''
- Executive Director's Report

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, July 29, 2015 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *http://www.access-board.gov/webcast.* Call-in information (listen only) and a communication access real-time translation (CART) Web streaming link for the presentation of the Rail Vehicles Access Advisory Committee report will be posted on the Access Board's Rail Vehicles Access Advisory Committee Web site page at *www.access-board.gov/rvaac.*

David M. Capozzi,

Executive Director.

[FR Doc. 2015–16801 Filed 7–8–15; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[6/23/2015 through 7/2/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Steward Plastics, Inc. d/b/a Smooth-Bor Plastics.	23322 Del Lago Drive, Laguna Hills, CA 92653.	6/29/2015	The firm manufactures medical tubing and residential construction tubing for various applications.
Astro Tool Corporation	21615 Southwest Tualatin-Valley Highway, Beaverton, OR 97003.	6/30/2015	The firm manufactures hand tools for crimping and accessories.
Pompanoosuc Mills Corporation.	3184 Route 5, East Thetford, VT 05043.	6/29/2015	The firm manufactures hand crafted hardwood furniture and upholstered furniture.
Etron, Inc	1410 Peruville Road, Freeville, NY 13068.	6/30/2015	The firm manufactures micro programmable controllers used as variable speed vacuum controllers.
Corry Rubber Corporation	601 West Main Street, Corry, PA 16407.	7/2/2015	The firm manufactures molded and extruded rubber products for the automotive, aerospace and other industrial markets.
Criterion Technology, Inc	101 McIntosh Parkway, Thomaston, GA 30286.	7/1/2015	The firm manufactures optical quality polymer dome covers and parts.
KAM Manufacturing, Inc	1197 Grill Road, Van Wert, OH 45891.	7/1/2015	The firm manufactures handbags with outer surface textile.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: July 2, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–16770 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–15–2015]

Foreign-Trade Zone 44—Mount Olive, New Jersey; Authorization of Production Activity; Givaudan Fragrances Corporation (Fragrance Compounds), Mount Olive, New Jersey

On March 4, 2015, Givaudan Fragrances Corporation submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 44—Site 1 in Mount Olive, New Jersey.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 14094–14095, 3–18–2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including § 400.14.

Dated: July 1, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015–16822 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–023]

Certain Uncoated Paper From the People's Republic of China: Notice of Correction to Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Joy Zhang, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1503 and (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION: On June 29, 2015, the Department of Commerce (the Department) published the preliminary affirmative countervailing duty determination on certain uncoated paper from the People's Republic of China.[1] The *Preliminary Determination* contained inadvertent errors related to certain company names. Specifically, in the *Preliminary Determination* the Department should have indicated that the mandatory respondent, referred to in the collective as the Asia Symbol Companies, is comprised of the following firms: Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Shandong) Pulp & Paper Co., Ltd. (AS Shandong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), and Greenpoint Global Trading (Macao Commercial Offshore) Limited (Greenpoint). Additionally, in the *Preliminary Determination,* the Department should have referred to UPM Changshu as UPM (China) Co. Ltd. (UPM).

This correction to the *Preliminary Determination* is issued and published in accordance with section 703(b)(1) of the Tariff Act of 1930, as amended.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–16823 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Uncoated Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 80 FR 36968 (June 29, 2015) (*Preliminary Determination*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD797

Marine Mammals; File No. 19293

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 Dolphin World Productions Ltd, 59 Cotham Hill, Bristol, BS6 6JR, United Kingdom to conduct commercial or educational photography on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or email comments must be received on or before August 10, 2015.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the 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.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

On March 2, 2015, notice was published in the **Federal Register** (80 FR 11177) that a request for a permit to commercial or educational photography on bottlenose dolphins (*Tursiops truncatus*) in the Florida Bay 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.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes filming and photography of the Florida Bay stock of bottlenose dolphins for purposes of a documentary film. The activities fall under the definition of level B harassment via aircraft and from a small 20 ft vessel. Filming would take place for approximately 30 days between May 20, 2015 and September 1, 2015. The permit is valid through September 30, 2015.

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.

Dated: June 26, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–16780 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE034

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Bluefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on July 27, 2015, from 9 a.m. until noon.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and telephone-only connection details are available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Council's Atlantic Bluefish Monitoring Committee to discuss and recommend multi-year (2016–18) annual catch targets (ACTs) and other associated management measures for the Atlantic bluefish fisheries.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 6, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–16789 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE031

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, July 23 through Friday, July 24, 2015. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at Royal Sonesta Harbor Court Baltimore, 550 Light St, Baltimore, MD 21202, telephone: (410) 234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on the meeting location and agenda.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet from 1 p.m. to 5 p.m. on Thursday, July 23 and from 8 a.m. to 12 p.m. on Friday, July 24 to discuss and recommend 2016 annual catch targets (ACTs) and other associated management measures for the summer flounder, scup, and black sea bass fisheries. Multi-year ACTs and management measures, applicable to fishing years 2016–18, may be considered.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid

should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 6, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–16788 Filed 7–8–15; 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; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, FL 33149 [Principal Investigator: Dr. Keith Mullin], has applied for an amendment to Scientific Research Permit No. 14450–02.

DATES: Written, telefaxed, or email comments must be received on or before August 10, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14450 from the list of available applications.

These documents are also available upon written request or by appointment in the 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.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 14450 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14450–02 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14450–02, last amended on December 31, 2014, authorizes the SEFSC to take all cetacean species that occur in U.S. and international waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. Activities include aerial and vessel-based line-transect sampling, acoustic sampling, behavioral observations, vessel-based photo-identification, and biopsy sampling. Satellite tagging of ESA-listed large whales is also authorized. Tissue samples collected in other countries may be imported into the U.S. The permit expires on February 28, 2019.

The SEFSC is requesting the permit be amended to authorize satellite tagging of non-ESA listed cetaceans during authorized vessel surveys to support NMFS stock assessments as follows: 40 Bryde's whales (*Balaenoptera edeni*), 40 of each species of short-finned (*Globicephala macrorhynchus*) and long-finned (*Globicephala melas*) pilot whales, and 20 individuals each of the 21 other authorized non-listed cetacean species, annually. Tags would be either suction cup attachments, fully implantable or minimally invasive dart attachments. A maximum of 2 tags could be placed on an animal at one time. Adults of both sexes without calves would be tagged. In addition, the SEFSC is requesting authorization to import and export marine mammals samples from sources (other than currently authorized biopsy sampling) to support the NMFS research on these species.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of the amendment requests to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 30, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–16779 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD825

Marine Mammals; File Nos. 17278 and 17557

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that major amendments have been issued to James Shine, Ph.D., Harvard University School of Public Health, 401 Park Drive, 404H West, Boston, Massachusetts 02215, (Permit No. 17278–01) and the NMFS Forensics Office, 219 Fort Johnson Road, Charleston, SC 29412 (Permit No. 17557–01).

ADDRESSES: The permit amendments and related documents are available for review upon written request or by appointment in the 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.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore, Amy Sloan, or Malcolm Mohead, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 20, 2015, notice was published in the **Federal Register** (80 FR 14907) that requests for amendments to Permit Nos. 17278 and 17557 to import specimens from long-finned pilot whales (*Globicephala melas;* 17278) and scalloped hammerhead sharks (*Sphyrna lewinia;* 17557) for scientific research had been submitted by the above-named applicants. The requested permit amendments have 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), as applicable.

Permit No. 17278 authorizes Dr. Shine to import and receive parts from subsistence-collected long-finned pilot whales (*Globicephala melas*) archived at the Faroese Museum of Natural History, Faroe Islands. The permit, as amended, increases the number of samples authorized to be imported from 15 to 100 animals annually, as well as authorization to conduct analyses of chlorinated and fluorinated organic chemicals using the same samples.

Permit No. 17557 authorizes the NMFS Forensics Office to receive, import, export, transfer, archive, and conduct analyses on marine mammal and ESA-listed species parts under NMFS jurisdiction. The permit has been amended to include scalloped hammerhead sharks (*Sphyrna lewinia*) recently listed under the ESA.

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 the permit amendment (Permit No. 17557–01) 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: June 26, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–16781 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2015–0026]

United States Patent and Trademark Office and Korean Intellectual Property Office Collaborative Search Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is initiating a joint Work Sharing Pilot Program with the Korean Intellectual Patent Office (KIPO) to study whether the exchange of search reports between offices for corresponding counterpart applications improves patent quality and facilitates the examination of patent applications in both offices. In the pilot program, each office will concurrently conduct a prior art search for its corresponding counterpart application. The search report from each office will then be exchanged between offices before either office issues a communication concerning patentability to the applicant. As a result of this exchange of search reports, the examiners in both offices may have a more comprehensive set of references before them when making an initial patentability determination. Each office will accord special status to its counterpart application to first action. First Action Interview (FAI) pilot program procedures will be applied during the examination of the U.S. application and make the Korean search report of record concurrently with the issuance of a Pre-Interview Communication.

DATES: *Effective Date:* September 1, 2015.

Duration: Under the United States-Korean Collaboration Pilot (US–KR CSP) program, the USPTO and KIPO will accept petitions to participate for two years from its effective date. During the pilot program, each office will be limited to granting 400 petitions. The offices may extend the pilot program (with or without modification) for an additional amount of time, if necessary. Both offices reserve the right to terminate the pilot program at any time.

FOR FURTHER INFORMATION CONTACT: Daniel Hunter, Director of International Work Sharing, Planning, and Implementation, Office of International Patent Cooperation, by telephone at 571–272–8050 regarding the handling of any specific application participating in the pilot. Any questions concerning this notice may be directed to Joseph Weiss, Senior Legal Advisor, Office of Patent Legal Administration, by phone (571) 272–7759. Any inquiries regarding this pilot program can be emailed to *csp@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The USPTO is continually looking for ways to improve the quality of issued patents and to promote work sharing between other Intellectual Property (IP) Offices throughout the world. The USPTO has launched several work sharing pilot programs in recent years (*e.g.,* numerous Patent Prosecution Highway Pilot Programs). In furtherance of promoting interoffice work sharing, the USPTO and KIPO will cooperate in a study to determine whether work sharing between IP offices, in the form of exchanging the results from independently performed concurrent searches, increases the efficiency and quality of patent examination. This exchange of search reports would occur prior to making determinations regarding patentability. Work sharing benefits applicants by promoting compact prosecution, reducing pendency, and supporting patent quality by reducing the likelihood of inconsistencies in patentability determinations (not predicated upon differences in national patent laws) between IP offices when considering corresponding counterpart applications.

Currently, an application filed in the USPTO with a claim of foreign priority may have a search report and art cited by the foreign office in the priority application provided to applicant during the U.S. application's pendency. After review of the search report and cited art, an applicant may submit an Information Disclosure Statement (IDS) in the U.S. application to provide the information to the USPTO. Often this submission occurs after examination on the merits is already underway in the U.S. application. Upon evaluation of the search report and cited art, the U.S. examiner may determine that the art cited by the foreign office is relevant to patentability and merits further examination before making a final determination on patentability. The delay caused by further examination results in additional costs to an applicant and the USPTO that could have been avoided if the U.S. examiner was in possession of the foreign office's search results before commencing examination of the application. Furthermore, in light of the various expedited examination programs currently in place, the potential exists that a U.S. application may reach final disposition before an applicant is in receipt of a foreign office's search report. Work sharing between intellectual Property (IP) offices in the form of an exchange of search reports may increase efficiency and promote patent examination quality by providing the examiner with both offices' search reports when examination commences. In order to study the benefits of the exchange of search reports between offices, current USPTO examination practice would need to be modified to conduct a search and generate a search report, without issuance of an Office action. The U.S. application also would need to be ''made special'' pursuant to USPTO procedures to ensure that it could be contemporaneously searched with its corresponding counterpart application.

The USPTO is using the First Action Interview Pilot Program (FAI) in this

search report work sharing pilot program because its procedure bifurcates the determination and evaluation of a prior art search from the notice of rejection. *See Full First Action Interview Pilot Program,* 1367 *Off. Gaz. Pat. Office* 42 (June 7, 2011). Under the FAI pilot program, participants receive a Pre-Interview Communication providing the results of a prior art search conducted by the examiner. Participants then have three options: (1) File a request not to conduct a first action interview; (2) submit a reply under 37 CFR 1.111 after reviewing the Pre-Interview Communication; or (3) conduct an interview with the examiner. Participants in the FAI pilot program experience many benefits including: (1) The ability to advance prosecution of an application; (2) enhanced interaction between applicant and the examiner; (3) the opportunity to resolve patentability issues one-on-one with the examiner at the beginning of the prosecution process; and (4) the opportunity to facilitate possible early allowance.

The US–KR CSP program differs from the FAI pilot program procedure by requiring a Petition to Make Special for the participating application, and providing for the exchange of information with KIPO at different stages of prosecution as set forth in this notice.

The USPTO also is initiating a joint Work Sharing Pilot Program with the Japan Patent Office (JPO). The KIPO and JPO pilot programs are different in the way that they operate. Thus, while there may be applications that are eligible for both work sharing pilot programs, such applications will not be permitted to participate in both pilot programs due to the differences in work sharing procedures of these two different programs. More information about the US–KR CSP program can be found on the USPTO's Internet Web site at: *http://www.uspto.gov/patents-getting-started/international-protection/collaborative-search-pilot-program-csp.*

II. Overview of Pilot Program Structure

An application must meet all of the requirements set forth in section III of this notice to be accepted into this pilot program. An applicant must file a Petition to Make Special using form PTO/SB/437KR via EFS-web in a U.S. application. Use of the form will assist an applicant in complying with the pilot program's requirements. Form PTO/SB/437KR is available at: *http://www.uspto.gov/patents-getting-started/international-protection/collaborative-search-pilot-program-csp.* An applicant's use of this form allows the USPTO to quickly identify participating applications, facilitates timely processing in accordance with this notice, and simplifies petition preparation and submission for an applicant. The collection of information involved in this pilot program has been submitted to OMB. The collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

No fee is required for submission of petitions using Form PTO/SB/437KR. The fee (currently $140.00) for a petition under 37 CFR 1.102 (other than those enumerated in 37 CFR 1.102(c)) is hereby *sua sponte* waived for petitions to make special based upon the procedure specified in this notice.

Each office may reevaluate the workload and resources needed to administer the pilot program at any time. The USPTO will provide notice of any substantive changes to the program (including early termination of the program) at least thirty (30) days prior to implementation of any changes.

New patent applications are normally taken up for examination in the order of their U.S. filing date. Applications accepted into the US–KR CSP program will receive expedited processing by being granted special status and taken out of turn until issuance of a Pre-Interview Communication, or first action allowance, but will not maintain special status thereafter. While KIPO and USPTO will be sharing search reports, the possibility exists that there may be differences in the listing of references made of record by the USPTO versus those made of record in the corresponding KIPO counterpart application. Participants in the US–KR CSP program should review the references cited in each respective office's search reports. If any KIPO communication to an applicant cites references that are not already of record in the USPTO application and the applicant wants the examiner to consider the references, the applicant should promptly file an Information Disclosure Statement (IDS) that includes a copy of the KIPO communication along with copies of the newly cited references in accordance with 37 CFR 1.98 and MPEP section 609.04(a)–(b). See also MPEP sections 609 and 2001.06(a).

III. Requirements for Participation in the Pilot Program

The following requirements must be satisfied for a petition under the US–KR CSP Program to be granted:

(1) The application must be a non-reissue, non-provisional utility application filed under 35 U.S.C. 111(a), or an international application that has entered the national stage in compliance with 35 U.S.C. 371(c), with an effective filing date of no earlier than March 16, 2013. The U.S. application and the corresponding KIPO counterpart application must have a common earliest priority date that is no earlier than March 16, 2013.

(2) A completed petition form PTO/SB/437KR must be filed in the application via EFS-Web. Form PTO/SB/437KR is available at: *http://www.uspto.gov/patents-getting-started/international-protection/collaborative-search-pilot-program-csp.*

(3) The petition submission must include an express written consent under 35 U.S.C. 122(c) for the USPTO to accept and consider prior art references and comments from KIPO, during the examination of the U.S. application participating in the pilot program. The petition also must provide written authorization for the USPTO to provide KIPO access to the participating U.S. application's bibliographic data and search reports in accordance with 35 U.S.C. 122(a) and 37 CFR 1.14(c). Form PTO/SB/437KR includes language compliant with the consent requirements for this pilot program.

(4) The petition must be filed at least one day before a first Office action on the merits of the application appears in the Patent Application Information Retrieval (PAIR) system (*i.e.,* at least one day prior to the date when a first Office action on the merits, notice of allowability or allowance, or action under *Ex parte Quayle,* 1935 Dec. Comm'r Pat. 11 (1935), appears in the PAIR system). An applicant should check the status of the application using the PAIR system prior to submitting the petition to ensure that this requirement is met.

(5) The petition for participation filed in the corresponding KIPO counterpart application for the US–KR CSP Program must be grant or have granted by KIPO. The KIPO and the USPTO petitions should be filed within fifteen days of each other. Both the KIPO and the USPTO petitions must be granted for the applications to be treated under the US–KR CSP program. As the requirements of each office's pilot program may differ, applicants should review the requirements for both pilot programs when considering participation, ensuring that the respective corresponding counterpart applications can comply with each office's requirements.

(6) The petition submission must include a claims correspondence table that notes which claims between the pending U.S. and KIPO applications

have a substantially corresponding scope to each other. Claims are considered to have a ''substantially corresponding scope'' where, after accounting for differences due to claim format requirements, the scope of the corresponding claims in the corresponding KIPO counterpart application would either anticipate or render obvious the subject matter recited under U.S. law. Additionally, claims in the corresponding U.S. counterpart application that introduce a new/different category of claims than those presented in the corresponding KIPO counterpart application are not considered to substantially correspond. For example, where the corresponding KIPO counterpart application contains only claims relating to a process of manufacturing a product, then any product claims in the corresponding U.S. counterpart application are not considered to substantially correspond, even if the product claims are dependent on process claims which substantially correspond to claims in the corresponding KIPO counterpart application. Applicants may file a preliminary amendment in compliance with 37 CFR 1.121 to amend the claims of the corresponding U.S. counterpart application to satisfy this requirement when attempting to make the U.S. application eligible for the program.

(7) The application must contain three or fewer independent claims and twenty or fewer total claims. The application must not contain any multiple dependent claims. For an application that contains more than three independent claims or twenty total claims, or any multiple dependent claims, applicants may file a preliminary amendment in compliance with 37 CFR 1.121 to cancel the excess claims and/or the multiple dependent claims to make the application eligible for the program.

(8) The claims must be directed to a single invention. If the Office determines that the claims are directed to multiple inventions (*e.g.,* in a restriction requirement), the applicant must make a telephonic election without traverse in accordance with the procedures outlined in section V of this notice. An applicant is responsible for ensuring that the same invention is elected in both the U.S. and KIPO corresponding counterpart applications for concurrent treatment in the US–KR CSP program.

(9) All submissions for the participating application while being treated under the US–KR CSP program's procedure must be filed via EFS-Web.

(10) The petition must include a statement that the applicant agrees not to file a request for a refund of the search fee and any excess claim fees paid in the application after the mailing or notification date of the Pre-Interview Communication. See form PTO/SB/413C. Any petition for express abandonment under 37 CFR 1.138(d) to obtain a refund of the search fee and excess claim fee filed after the mailing or notification date of a Pre-Interview Communication will not be granted.

IV. Decision on Petition To Make Special Under the US–KR Collaborative Search Pilot Program (Form PTO/SB/437KR)

An applicant must file a Petition to Make Special using Form PTO/SB/437KR in an eligible U.S. application for entry into the US–KR CSP program. Applicant also must file the appropriate petition paper in the corresponding KIPO counterpart application for participation in the US–KR CSP program. Once both petitions are granted, the U.S. application will receive expedited processing by being placed on the examiner's special docket for examination in accordance with sections V–VIII of this notice.

A. Petition Decision Making

An applicant must file appropriate petition papers in both the USPTO and KIPO corresponding counterpart applications within fifteen days of each other. If the petitions are not filed within fifteen days of each other, an applicant runs the risk of one of the pending applications being acted upon by an examiner before entry into the pilot program, which will result in both applications being denied entry into the pilot program. Both offices must grant the respective petitions in order for the applications to participate in the pilot program. Once the USPTO issues a decision granting the petition, an applicant will no longer have a right to file a preliminary amendment that amends the claims. Any preliminary amendment filed after petition grant and before issuance of a Pre-Interview Communication amending the claims will not be entered unless approved by the examiner. After the petition is granted and before issuance of the Pre-Interview Communication, an applicant may still submit preliminary amendments to the specification that do not affect the claims. If either office determines that the petition must be denied, then the other office will be informed of the denial determination, and both offices will issue decisions denying the petition.

B. Petition Dismissal

If an applicant files an incomplete Form PTO/SB/437KR, or if an application accompanied by Form PTO/SB/437KR does not comply with the requirements set forth in this notice, the USPTO will notify the applicant of the deficiency by issuing a dismissal decision and the applicant will be given a single opportunity to correct the deficiency. If an applicant still wishes to participate in the pilot program, the applicant must make appropriate corrections within one month or thirty days of the mailing date of the dismissal decision, whichever is longer. The time period for reply is *not* extendable under 37 CFR 1.136(a). If the applicant fails to correct all of the noted deficiencies within the time period set forth, the USPTO will render a denial decision and notify KIPO in accordance with this notice, and neither application will be eligible for the pilot program. The U.S. application will then be taken up for examination in accordance with standard examination procedures, unless designated special in accordance with another established procedure (*e.g.,* Prioritized Examination, Special Based on Applicant's Age, etc.). If an applicant timely files a response to the dismissal that corrects all the noted deficiencies and does not introduce new instances of non-compliance, the USPTO will issue a decision granting the petition.

C. Withdrawal of Petition

An application can be withdrawn from the pilot program only by filing a withdrawal of the petition to participate in the pilot program prior to issuance of a decision granting the petition. Once the petition for participation in the pilot program has been granted (one day before it appears in PAIR), withdrawal from the pilot program is not permitted. The USPTO will treat any request for withdrawal from the pilot program filed after the mailing or notification of acceptance into the pilot program as a request to not conduct an interview, and subsequent to the mailing of the Pre-Interview Communication, the USPTO will issue a First-Action Interview Office Action, in due course. (See section VII.B.1. of this notice.)

V. Requirement for Restriction

If the examiner determines that not all the claims presented are directed to a single invention, the telephone restriction practice set forth in MPEP section 812.01 will be followed. An applicant must make an election without traverse during the telephonic interview. If the applicant refuses to

make an election without traverse, or if the examiner cannot reach the applicant after a reasonable effort (*i.e.,* three business days), the examiner will treat the first claimed invention (the group of claim 1) as constructively elected without traverse for examination. When a telephonic election is made, the examiner will provide a complete record of the telephone interview, including the restriction or lack of unity requirement and the applicant's election, as an attachment to the Pre-Interview Communication. Applicants are strongly encouraged to ensure that applications submitted for the pilot program are written such that they claim a single, independent, and distinct invention. An applicant is responsible to ensure the same invention is elected in both the U.S. and KIPO corresponding counterpart applications for concurrent treatment in this joint office work sharing pilot program.

VI. Pre-Interview Communication

If the application contains only one invention or an applicant has elected one invention without traverse, the examiner will conduct a prior art search for the claimed invention under consideration. The examiner may prepare either a Notice of Allowability or a Pre-Interview Communication.

A. Notice of Allowability

If the examiner determines that the application is in condition for allowance or the application could be placed in condition for allowance with minor corrections or a possible amendment or submission, a Pre-Interview Communication and all subsequent FAI procedures under this pilot program will not be necessary. The examiner may allow the application, or contact the applicant and conduct an interview in accordance with MPEP section 713 to discuss any possible amendments or submissions to place the application in condition for allowance. If the USPTO has not received the KIPO search report at the time the examiner has decided the claims are allowable, the USPTO will notify KIPO of the examiner's findings and references identified during the search. The USPTO will wait for up to 90 days from the date of notification for receipt of the KIPO search. Upon receipt of the KIPO search report, the examiner will consider the references cited in the KIPO search report before making a final determination whether to issue a Notice of Allowability. If the KIPO search report is not received within 90 days, the examiner will issue a Notice of Allowability without consideration of the KIPO search report. An applicant will be responsible for determining the appropriateness of any future correspondence with the USPTO for information later obtained from KIPO. If the examiner issues a Notice of Allowability with consideration of the KIPO search report, the examiner will cite references from the KIPO search report in a Notice of References Cited (PTO–892). The Notice of Allowability with a completed form PTO–892 also will be forwarded to KIPO for further consideration by the KIPO examiner of record for the corresponding KIPO counterpart application. If a Notice of Allowability will not issue, then the examiner will prepare and issue a Pre-Interview Communication in accordance with Section VI.B of this notice.

B. Pre-Interview Communication

If the examiner determines the application is not in condition for allowance, the examiner will prepare a Pre-Interview Communication and a PTO–892 citing the prior art references, identifying any rejections or objections relevant to the claimed invention, and any designation of allowable subject matter. If the USPTO has not received the KIPO search report at the time the examiner has completed the Pre-Interview Communication, the USPTO will notify KIPO of the examiner's findings and references identified during the search. The USPTO will wait for up to 90 days from the date of notification for receipt of the KIPO search. Upon receipt of the KIPO search report, the examiner will issue a Pre-Interview Communication and include a copy of the KIPO search report. Thus, the examiner is not required to cite in the Pre-Interview Communication references cited in the KIPO search report, because the KIPO search report is being sent to the applicant with the Pre-Interview Communication. If the KIPO search report is not received within 90 days, the examiner will issue the Pre-Interview Communication to the applicant, and the application will be removed from the pilot program for evaluation purposes only, but will continue to be treated in accordance with this notice. An applicant is responsible for responding to the USPTO Pre-Interview Communication in accordance with the First Action Interview Program procedures discussed in Section VII of this notice.

The Pre-Interview Communication issued to an applicant will set forth a time period of one month or thirty days, whichever is longer, for the applicant to request or decline an interview. An applicant is responsible for responding to the Pre-Interview Communication in accordance with the First Action Interview Program procedures discussed in Section VII of this notice. The USPTO will permit the applicant to extend this time period for reply pursuant to 37 CFR 1.136(a) for one additional month as set forth in section VII, subsection B (Applicant's Options and Reply to Pre-Interview Communication) and subsection C (Failure to Respond to Pre-Interview Communication) of this notice. The examiner's typical working schedule also will be provided with the Pre-Interview Communication to indicate the examiner's availability for scheduling the interview.

VII. Post Pre-Interview Communication

A. Amendments Filed After Pre-Interview Communication

Once a Pre-Interview Communication has been entered in an application, an applicant no longer has a right to amend the application until the first action interview is conducted and the First-Action Interview Office Action is sent. Therefore, any amendments filed after the Pre-Interview Communication, but before the interview and the mailing or notification date of a First-Action Interview Office Action (PTOL–413FA), will not be entered unless approved by the examiner or in accordance with the procedure of the Full First Action Interview Pilot Program in section VII, subsection B(2), or section VIII, subsection B(3), of this notice. This is because the examiner has devoted a significant amount of time to the preparation of the Pre-Interview Communication. See 37 CFR 1.115(b) and MPEP section 714.01(e). The USPTO may enter the amendment if it is clearly limited to: Cancellation of claims; adoption of examiner suggestions; placement of the application in condition for allowance, including an explanation on how the proposed amendments overcome art cited and/or applied in the KIPO search report, if necessary, in accordance with U.S. patent laws; and/or correction of informalities (similar to the treatment of an after-final amendment). Amendments will be entered solely at the examiner's discretion.

B. Applicant Options and Reply to Pre-Interview Communication

Upon receipt of a Pre-Interview Communication, the applicant has three options:

(1) File a ''Request to Not Have a First Action Interview'';

(2) File a reply under 37 CFR 1.111 waiving the first action interview and First-Action Interview Office Action—

an applicant is accepting that the Pre-Interview Communication is the first Office action on the merits; or

(3) Schedule the first action interview—an applicant must file an Applicant Initiated Interview Request Form (PTOL–413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview to be conducted within two months or sixty days, whichever is longer, from the filing of the Applicant Initiated Interview Request.

1. Request To Not Have a First Action Interview

If an applicant wishes not to have the first action interview, the applicant should electronically file a letter requesting not to have a first action interview within the time period set forth in the Pre-Interview Communication. In this situation, a first action interview will not be conducted, and the examiner will provide the First-Action Interview Office Action setting forth the requirements, objections, and rejections relevant to the claimed invention. However, such a request will not preclude the examiner from contacting the applicant and conducting a regular interview in accordance with MPEP section 713 to discuss any issues or possible amendment to place the application in condition for allowance. To ensure that the request will be processed and recognized timely, an applicant should file the request electronically via EFS-Web, selecting the document description ''Request to Not Have a First Action Interview'' on the EFS-Web screen.

Once the petition for entry into the pilot program has been granted (one day before it appears in PAIR), withdrawal from the pilot program is not permitted. Therefore, the USPTO will treat a request for withdrawal from the pilot program filed after the mailing or notification of granting an applicant's petition to participate in the pilot program as a request to not conduct an interview, issue a Pre-Interview Communication, and subsequently enter a First-Action Interview-Office Action, in due course.

2. File a Reply Under 37 CFR 1.111, Waiving the First Action Interview and First-Action Interview Office Action

Applicants may file, preferably in conjunction with a request to not conduct the interview, a reply in compliance with 37 CFR 1.111(b)–(c) to address every rejection, objection, and requirement set forth in the Pre-Interview Communication, including any issues of patentability raised by the art cited and/or applied in the KIPO search report, if necessary, in accordance with U.S. patent laws, thereby waiving the first action interview and First Action Interview Office Action. The reply under 37 CFR 1.111 must be filed within the time period for reply set forth in the Pre-Interview Communication. To ensure that the request will be processed and recognized timely, an applicant should file the request electronically via EFS-Web, selecting the document description ''Reply under 1.111 to Pre-Interview Communication'' on the EFS-Web screen.

In this situation, a first action interview will not be conducted, and a First Action Interview Office Action will not be provided to the applicant. The Pre-Interview Communication will be deemed the first Office action on the merits. The examiner will consider the reply under 37 CFR 1.111 and provide an Office action in response to the reply, in due course. The Office action will be the second Office action on the merits, and thus it could be a final Office action, a notice of allowability, or other appropriate action.

3. Schedule the First Action Interview

If an applicant wants a first action interview with the examiner, the applicant must timely file an Applicant Initiated Interview Request Form (PTOL 413A), *electronically using EFS-Web,* accompanied by a proposed amendment and/or arguments (as an attachment to the request). To ensure that the request will be processed and recognized timely, the applicant should select the document description ''First Action Interview—Schedule Interview Request.''

An applicant must designate a proposed date to conduct the interview to facilitate scheduling of the first action interview. The applicant's proposed date to conduct the interview must be within two months or sixty days, whichever is longer, from the filing of the Applicant Initiated Interview Request Form. An applicant should consult the examiner's work schedule provided in the Pre-Interview Communication and discuss with the examiner the best date for conducting the interview.

After filing the Applicant Initiated Interview Request Form, the applicant must contact the examiner to confirm the interview date. The applicant's *failure to conduct an interview within two months or sixty days,* whichever is longer, from the filing of Applicant Initiated Interview Request Form *will be treated as a failure to respond to the Pre-Interview Communication.* See section VII; subsection C (Failure to Respond to Pre-Interview Communication) of this notice. The interview may be in person, telephonic, or a video-conference. The applicant must provide written authorization to conduct any Internet email communications with the examiner. See MPEP section 502.03 for more information.

The proposed amendment or arguments must be clearly labeled as ''*PROPOSED*'' at the header or footer of each page and filed electronically via EFS-Web as an attachment to the Applicant Initiated Interview Request Form. The proposed amendment or arguments will *not* be entered as a matter of right. The proposed amendment or arguments must address every proposed rejection, objection, and requirement set forth in the Pre-Interview Communication, including any issues of patentability raised by the art cited and/or applied in the KIPO search report, if necessary, in accordance with U.S. patent laws. The examiner, based upon discussions, feedback, and agreement with an applicant during the interview may at his or her discretion enter the amendment if found sufficient to advance prosecution on the merits. See MPEP sections 713.01 III and 713.04; see also MPEP sections 714 and 1302.04. Even if the examiner denies entry of the proposed amendment, the proposed amendment will be placed in the application file.

Preparation for the Interview: An applicant must be prepared to fully discuss the prior art of record, any relevant interview talking points from the interview talking points posted at *http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/fai_talking_points.pdf,* and any rejections or objections with the intent to clarify and resolve all issues with respect to patentability during the interview, including any issues of patentability raised by the art cited and/or applied in the KIPO search report, if necessary, in accordance with U.S. patent laws. An applicant also must be prepared to discuss any proposed amendment or arguments previously submitted and discuss and resolve any relevant issues that arise. The interview talking points posted at *http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/fai_talking_points.pdf* represent a non-exhaustive list of potential topics for discussion in a first action interview. The talking points are available to the public and the patent examining corps to assist and facilitate comprehensive and effective first action interviews.

Multiple proposed amendments or sets of arguments are *not* permitted.

Inventor Participation: Inventor participation in the interview process is encouraged, as it may assist in the resolution of outstanding rejections and/or objections.

C. Failure To Respond to Pre-Interview Communication

If an applicant fails to: (1) Respond to the Pre-Interview Communication within the time period for reply or (2) conduct the interview within two months or sixty days, whichever is longer, from the filing of the Applicant Initiated Interview Request Form, the Office will enter a First-Action Interview Office Action. Therefore, the consequence for failure to respond to the Pre-Interview Communication is issuance of a First-Action Interview Office Action without the benefit of an interview.

VIII. First-Action Interview and First-Action Interview Office Action

A. First-Action Interview

The interview will be conducted in accordance with the procedure provided in MPEP section 713 except as otherwise provided in this notice. The interview should focus on and include:

1. A discussion to assist the examiner in developing a better understanding of the invention;

2. A discussion to establish the state of the art as of the effective filing date of the claimed invention, including the prior art references cited by the applicant and the examiner (as only applications subject to the First Inventor to File provisions of the Leahy-Smith America Invents Act (AIA) are eligible for this pilot program); and

3. A discussion of the features of the claimed subject matter which make the invention patentable, including any proposed amendments to the claims.

4. A discussion regarding any issues of patentability raised by the art cited and/or applied in the KIPO search report, if necessary, in accordance with U.S. patent laws.

B. Three Possible Outcomes of a First-Action Interview

1. An agreement is reached and all claims are in condition for allowance. If the applicant and the examiner reach agreement that the application is in condition for allowance, the examiner must complete an Interview Summary (PTOL–413), enter and attach any necessary amendments or arguments (*e.g.,* the proposed amendment and/or an examiner's amendment), generate a notice of allowability (PTOL–37), and attach a copy of the completed Applicant Initiated Interview Request Form. If the examiner agrees to enter the proposed amendment, the examiner must annotate the first page of the proposed amendment (*e.g.,* ''OK to enter''). In an in-person interview, a courtesy copy of the completed forms will be given to the applicant at the conclusion of the interview. The completed forms will then be promptly made of record with a Notice of Allowability and a Notice of Allowance and Fees Due (PTOL 85). The Notice of Allowability and the Notice of Allowance, interview summary, and all amendments made of record along with a completed Notice of References Cited form PTO–892 listing any newly cited references will also be forwarded to KIPO for consideration by the KIPO examiner of record for the corresponding KIPO counterpart application.

2. An agreement as to allowability is not reached. If the applicant and the examiner do not reach agreement during the interview, the examiner will set forth any unresolved, maintained, or new requirements, objections, and rejections in the First-Action Interview Office Action. The examiner also will complete an Interview Summary, highlighting the basis for any unresolved, maintained, or new requirements, objections, and rejections as well as resolution of any issues that occurred during the interview, attaching a copy of the completed Applicant Initiated Interview Request Form and any proposed amendments or arguments. In a personal interview, a courtesy copy of the completed forms may be given to the applicant at the conclusion of the interview. The completed forms will be promptly made of record.

For this situation, the First-Action Interview Office Action is deemed the first Office action on the merits. Because the requirements, objections, and grounds of rejection are provided in the Pre-Interview Communication and the First-Action Interview Office Action, the applicant has sufficient notice of the requirements, objections, and grounds of rejection. To avoid abandonment of the application, the applicant must, within two months or sixty days, whichever is longer, from the mailing or notification date of the First-Action Interview Office Action, file a reply in compliance with 37 CFR 1.111(b)–(c). This time period for reply is extendable under 37 CFR 1.136(a) for only two additional months. The First-Action Interview Office Action, interview summary and a completed Notice of References Cited form PTO–892 listing any newly cited references also will be forwarded to KIPO for consideration by the KIPO examiner of record for the corresponding KIPO counterpart application.

3. An agreement as to allowability is not reached, and applicant wishes to convert the previously submitted proposed amendment into a reply under 37 CFR 1.111(b) and waive receipt of a First-Action Interview Office Action. Applicants may request the USPTO to enter the previously filed proposed amendment and/or arguments as a reply under 37 CFR 1.111 to address every rejection, objection, and requirement set forth in the Pre-Interview Communication, waiving a First-Action Interview Office Action, if the proposed amendment and/or arguments comply with the requirements of 37 CFR 1.121 and 37 CFR 1.111(b)–(c). If the examiner agrees to enter the proposed amendment as the reply under 37 CFR 1.111 to the Pre-Interview Communication, the examiner must annotate the first page of the proposed amendment (*e.g.,* ''OK to enter''), and provide a statement in the Interview Summary (*e.g.,* ''Applicant requested to enter the proposed amendment as a reply under 37 CFR 1.111 to the Pre-Interview Communication, waiving the First-Action Interview Office Action''). The applicant cannot file any additional amendment and/or arguments until the mailing or notification of the next Office action.

In this situation, a First-Action Interview Office Action will not be provided to the applicant. The Pre-Interview Communication and the interview will be deemed the first Office action on the merits. The interview summary and a completed Notice of References Cited form PTO–892 listing any newly cited references, if any, also will be forwarded to KIPO for consideration by the KIPO examiner of record for the corresponding KIPO counterpart application. The examiner will enter the proposed amendment and/or arguments, consider it as the reply under 37 CFR 1.111, and provide an Office action in response to the reply. The Office action will be the second Office action on the merits, and thus it could be a final Office action, a notice of allowability, or other appropriate action.

C. Substance of Interview Must Be Made of Record

A complete written statement as to the substance of the interview with regard to the merits of the application must be made of record in the application, whether or not an agreement with the examiner was reached at the interview. It is the applicant's responsibility to make of

record the substance of an interview, and it is the examiner's responsibility to see that such a record is made and to correct inaccuracies, including those which bear directly on the question of patentability. See MPEP section 713.04.

Dated: July 2, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015–16850 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0064]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Logistics Agency proposes to add a new system of records, S240.28 DoD, entitled ''Case Adjudication Tracking System (CATS)'' for personnel security, suitability, fitness, access management, and National Security that provides a common comprehensive medium to record and document personnel security adjudicative actions within the Department, federal agencies, and for DoD contractors; CATS also provides a status of investigative and adjudicative updates to security officers and security managers, and appropriately screened, investigated, and eligible users with direct access to CATS based on a user's specific functions, security eligibility, and access level; This includes the adjudicators in the DoD Central Adjudications Facility (CAF) and personnel security officers in the services, DoD Components, approved non-DoD agencies, and Industry security offices with an approved DD Form 254, DoD Contract Security Classification Specification. CATS also provides records to the DoD Personnel Security Research Center (PERSEREC) to create models for personnel security continuous evaluation and insider threat assessment, and compile statistical data used for analyses and studies.

DATES: Comments will be accepted on or before August 10, 2015. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. LaDonne L. White, HQ Privacy Officer, Defense Logistics Agency, Headquarters McNamara Complex 8725 John J. Kingman Rd, Suite 3533, Fort Belvoir, VA 22060–6221 or by calling (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by the Privacy Act of 1974, as amended, was submitted on June 19, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S240.28 DoD

SYSTEM NAME:

Case Adjudication Tracking System (CATS)

SYSTEM LOCATION:

Department of Defense (DoD) Consolidated Adjudications Facility (CAF), 600 10th Street, Ft. Meade, MD 20755–5615.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees, federal contractor personnel, active military personnel, reserve and national guard personnel, whose personnel security, suitability, and eligibility for an HSPD–12 compliant credential are adjudicated by the DoD CAF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information used to view and review adjudicative actions, determinations, and decisions on summary investigation packages and documenting records conducted by Federal investigative organizations (*e.g.,* U.S. Office of Personnel Management (OPM)) and locator references to such investigations. Records documenting fitness determinations, eligibility for an HSPD–12 compliant credential, and the personnel security adjudicated and management process, to include an individual's Social Security Number (SSN); DoD Identification Number (DoD ID Number); name (including current, former, and alternate names); date of birth (DOB); place of birth; country of citizenship; type of DoD affiliation; employing activity; current employment status; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility and access status; whether eligibility determination was based on a condition (personal, medical, or financial), deviation from prescribed investigative standards, or waiver of adjudication guidelines; reports of security-related incidents, to include issue files; suspension of eligibility and/or access; denial or revocation of eligibility and/or access; eligibility recommendations or decisions made by an appellate authority; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; debriefing date(s) and reasons for debriefing; off-site visit requests; foreign travel and contacts; and security reporting, to include results from continuous evaluation and insider threat; and self-reporting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, as amended, Security Requirements for Government Employment; E.O. 10865, as amended, Safeguarding Classified Information Within Industry; E.O. 12829, as amended, National Industrial Security Program; E.O. 12968, as amended, Access to Classified Information; E.O. 13467, Reforming Processes Related to Suitability for Government

Employment, Fitness for Contractor Employees and Eligibility for Access to Classified National Security Information; E.O. 13488, Granting Reciprocity on Excepted Service and Federal Contractors Employee Fitness and Reinvestigating Individuals in Positions of Public Trust; E.O. 13478, Amendments to Executive Order 9397 Relating to Federal Agency Use of Social Security Numbers; E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information; the National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs; DoD Instruction (DoDI) 1400.25, Volume 731, DoD Civilian Personnel Management System: Suitability and Fitness Adjudication for Civilian Employees; DoDI 5200.02, DoD Personnel Security Program (PSP); DoDI 5220.22, National Industrial Security Program (NISP); DoDD 5205.16, DoD Insider Threat Program; DoD Regulation 5200.2R, DoD Personnel Security Program (PSP); DoD Manual 5105.21, Volume 1, Sensitive Compartmented Information (SCI) Administrative Security Manual: Administration of Information and Information Systems Security; Director of National Intelligence, Intelligence Community Directive Number 704, Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information; Homeland Security Presidential Directive-12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors; Office of Personnel Management Memorandum, Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12; and authorities cited therein.

PURPOSE(S):

CATS is an information system for personnel security, suitability, fitness, access management, and National Security that provides a common comprehensive medium to record and document personnel security adjudicative actions within the Department, federal agencies, and for DoD contractors. CATS also provides a status of investigative and adjudicative updates to security officers and security managers, and appropriately screened, investigated, and eligible users with direct access to CATS based on a user's specific functions, security eligibility and access level—this includes the adjudicators in the DoD Consolidated Adjudications Facility (CAF), DoD Continuous Evaluation Program Analysts, the DoD Insider Threat Management and Analysis Center analysts, and personnel security officers in the Services, DoD Components, approved non-DoD agencies, and Industry security offices with an approved DD Form 254, DoD Contract Security Classification Specification. CATS also provides records to the DoD Personnel Security Research Center (PERSEREC) to create models for personnel security continuous evaluation and insider threat assessment, and compile statistical data used for analyses and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

To a court or adjudicative body in a proceeding when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government is a party to litigation or has interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Except as noted in Sections 23 and 27 {of SF 86}, when a record on its face or in conjunction with other records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, particular program statute, regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Federal, foreign, State, local, tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, role, regulation, or order.

To any source or potential source from which information is requested in the course of an investigation concerning the hiring or retention of an employee or other personnel action, or the issuing or retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

To a Federal, State, local, foreign, tribal, or other public authority the fact that this system of records contains information relevant to the retention of an employee, or the retention of a security clearance, contract, license, grant, or other benefit. The other agency or licensing organization may then make a request supported by written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative personnel, or regulatory action.

To contractors, grantees, experts, consultants, or volunteers when necessary to perform a function or service related to this record for which they have been engaged. Such recipients shall be required to comply with the Privacy Act of 1974, as amended.

To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy.

To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the national Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or an successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

To the National Archives and Records Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

To the Office of Management and Budget when necessary for the review of private relief legislation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Information is retrieved by SSN and/or DOD ID number. When a user does an SCI search, the system requires a DOB and place of birth in addition to SSN and/or DoD ID Number to complete the lookup as an additional security mechanism.

SAFEGUARDS:

Records are stored on a secure military installation and in a building with 24-hour controlled access. Access to offices requires swipe access with Common Access Card and PIN. Records are maintained under the direct control of office personnel in the CAF during duty hours. Office is locked at all times and alarmed when unoccupied. Access to all records is role based and access to electronic records requires use of Common Access Card and PIN.

RETENTION AND DISPOSAL:

Disposition pending, treat records as permanent until the National Archives and Records Administration have approved the retention and disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DLA Information Operations (J6) and Chief Information Officer, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Privacy Access Requests, DoD Consolidated Adjudications Facility, 600 10th Street, Ft. Meade, MD 20755–5615.

Requesters should provide full name and any former names used, date and place of birth, and SSN and/or DoD ID Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Privacy Access Requests, DoD Consolidated Adjudications Facility, 600 10th Street, Ft. Meade, MD 20755–5615.

A request for information must contain the full name and any former names used, date and place of birth, SSN and/or DoD ID Number, and address where the records are to be returned.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

DoD rules for accessing records, for contesting contents and appealing adverse adjudication determinations are contained in DoD 5200.2–R, ''DoD Personnel Security Program'' (January 1987), or may be obtained from the DoD Consolidated Adjudications Facility, Privacy Act Requests, 600 10th Street, Ft. Meade, MD 20755–5615.

RECORD SOURCE CATEGORIES:

Information is received from individuals, their attorneys, and other authorized representatives; investigative reports from Federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports, and evaluations; correspondence from employing agencies; and from the following systems: Defense Enrollment Eligibility Reporting System; Defense Civilian Personnel Data System; Electronic Military Personnel Record System-Program; Marine Corps Total Forces System; Total Army Personnel Database (Active, Reserve and Guard); Operational Data Store Enterprise; Navy Accessions Security Information System; Bureau of Naval Personnel; Military Personnel Data System; Air Force Recruiting Information Support System (Active and Reserve); Office of Personnel Management (Federal Investigative Services); Manpower Programming and Execution System (MPES); Joint Access Data System; Special Access Program Personnel Adjudication Database Enterprise.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 323. For additional information, contact the system manager.

[FR Doc. 2015–16576 Filed 7–8–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2015–0004]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Marine Corps announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 8, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Children, Youth and Teen Programs (CYTP), Marine and Family Programs Division (MFY–3), 3280 Russell Road, Marsh Center, Quantico, VA 22134, or call CYTP at 703–784–9553.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: USMC Children, Youth and Teen Programs (CYTP) Registration Packet; NAVMC 11720, NAVMC 1750/4, and NAVMC 1750/5; OMB Control Number 0703–XXXX.

Needs and Uses: The information collected on these forms is used by Marine Corps Family Care Programs (MFP) and Inclusion Action Team (IAT) professionals for purposes of patron registration, to determine the general health status of patrons participating in CYTP activities and if necessary the appropriate accommodations for the patron for full enjoyment of CYTP services, and provides consent for information to be exchanged between MFP personnel and other designated individuals or organizations about a patron participating in MFP. These forms may potentially be completed by a member of the public. Collected information will be filed pursuant to the Privacy Act System of Records Notice NM01754–3.

NAVMC 1750/5 USMC Children, Youth & Teen Programs (CYTP) Registration Form:

Annual Burden Hours: 56,000.
Number of Respondents: 112,000.
Responses per Respondent: 1.
Average Burden per Response: 30 minutes.
Frequency: Annually.

NAVMC 1750/4 USMC Children, Youth & Teen Programs (CYTP) Health Assessment and Health Screening Tool for Inclusion Action Team (IAT):

Annual Burden Hours: 56,000.
Number of Respondents: 112,000.
Responses per Respondent: 1.
Average Burden per Response: 30 minutes.
Frequency: Annually.

NAVMC 11720 USMC Family Care Programs—Consent to Release Information:

Annual Burden Hours: 32,167.
Number of Respondents: 193,000.
Responses per Respondent: 1.
Average Burden per Response: 10 minutes.
Frequency: Annually.

Total:

Affected Public: Individuals or Households.
Annual Burden Hours: 165,000.
Number of Respondents: 198,000.
Responses per Respondent: 2.
Annual Responses: 396,000.
Average Burden per Response: 25 minutes.
Frequency: Annually.

Respondents are MFP patrons who provide information to MFP and IAT personnel in order to allow the child to participate in CYTP activities, determine the general health status of patrons participating in CYTP activities, and if necessary, determine the appropriate accommodations for the patron for full enjoyment of CYTP services, and provide consent for information about the patron from other specified individuals and organizations. These forms provide CYTP personnel with demographic information and emergency contact information. It also allows parents/guardians to provide consent for specific activities that may take place while participating in CYTP. Failure to provide information may limit MFP's ability to properly consider participants' health and special needs, adversely impact individuals from participation in CYTP activities, and will limit MFP's ability to communicate with organizations or individuals outside of DoD which may adversely affect available services. Having these forms is essential in providing the requested child care services and activities to all CYTP participants, and maintaining the continuity of care, safety and health of CYTP participants.

Dated: July 6, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–16785 Filed 7–8–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0090]

Agency Information Collection Activities; Comment Request; EDFacts Data Collection School Years 2016–17, 2017–18, and 2018–19

AGENCY: Institute of Education Sciences/National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revised information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0090 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, (202) 502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of

information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: EDFacts Data Collection School Years 2016–17, 2017–18, and 2018–19.

OMB Control Number: 1850—NEW (previously 1875–0240).

Type of Review: A revised information collection.

Respondents/Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 61.

Total Estimated Number of Annual Burden Hours: 126,880.

Abstract: EDFacts is a U.S. Department of Education (ED) initiative to collect, analyze, report on and promote the use of high-quality, pre-kindergarten through grade 12 (pre-K–12) performance data for use in education planning, policymaking, and management and budget decision making to improve outcomes for students. EDFacts enables the National Center for Education Statistics (NCES) to report on students, schools, staff, services, and education outcomes at the state, district, and school levels, by centralizing data provided by state education agencies, local education agencies, and schools. This centralized approach provides ED users with the ability to efficiently analyze and report on submitted data and has reduced the reporting burden for state and local data producers through the use of streamlined data collection, analysis, and reporting tools. EDFacts collects information on behalf of ED grant and program offices for approximately 180 data groups for all 50 states, Washington DC, Puerto Rico, and seven outlying areas and freely associated states (American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Commonwealth of the Northern Mariana Islands, Republic of Palau, and the U.S. Virgin Islands), the Department of Defense Education Activity (DoDEA), and the Bureau of Indian Education (BIE). NCES seeks authorization from OMB to continue its EDFacts data collection and is requesting a new clearance for the 2016–17, 2017–18, and 2018–19 school years in order to continue to provide EDFacts data to Department of Education program offices, as well as SEAs, LEAs, and schools. This collection package will be available for public comment during two open periods, a 60 day and a 30 day, and revisions will be made accordingly. This submission includes a few proposed changes to the EDFacts data collection. In addition to reviewing the proposed changes (detailed in Attachment C and the B Attachments), ED requests that SEAs and other stakeholders respond to the directed questions found in Attachment D.

Dated: July 6, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–16798 Filed 7–8–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Power Transformer Reserve

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The Department of Energy (DOE), Office of Electricity Delivery and Energy Reliability (OE), is seeking comments and information from interested parties to inform its policy development related to the possible establishment of a national reserve of power transformers that support the bulk power grid. The focus of the RFI is on the design and implementation of a National Power Transformer Reserve Program.

DATES: Comments must be received on or before August 24, 2015.

ADDRESSES: Comments can be submitted by any of the following methods and must be identified as ''Transformer Reserve.'' By the *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments. By email: *LPT.RFI.2015@hq.doe.gov,* and include ''Transformer Reserve'' in the subject line of the message. By mail: Alice Lippert, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 1E–078, 1000 Independence Avenue SW., Washington, DC 20585. Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. DOE, therefore, encourages those wishing to comment to submit comments electronically by email.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Alice Lippert, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 at *Alice.Lippert@hq.doe.gov,* 202–586–9600.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. electricity sector operates a complex and highly reliable electric power system, upon which the Nation's economy and security depend. The North American Bulk Power System (BPS) is extensive, consisting of various infrastructure components, including transformers, switches, transmission towers and lines, control centers, and computer controls. Of the BPS' physical infrastructure, large power transformers (LPTs) are critical components, because the reliable operation of the BPS depends heavily on the safe and efficient operation of a network of interconnected LPTs.

LPTs have long been a concern for the U.S. electricity sector because the failure of a single unit can interrupt electricity service to a large number of customers and lead to collateral damage, and it could be difficult to quickly replace it. LPTs are large, custom-designed pieces of equipment that entail a significant capital expenditure and a long lead-time to manufacture and ship. LPTs are not usually interchangeable. System owners often own and maintain spare LPTs at a number sufficient to mitigate risks from premature failure. The limited availability of spare LPTs, and the long lead times to procure replacements, could pose a potential threat to the availability and reliability of the Nation's bulk power system in the event of an emergency where a relatively large number of existing LPTs are damaged or destroyed.

Large-scale disruptions to the U.S. BPS are rare; however, it faces a wide variety of evolving threats, including but not limited to: Cyber and physical security intrusions, weather-related

incidents; geomagnetic disturbances (GMD); and electromagnetic pulse (EMP) effects. The electricity sector serves one of the four lifeline functions as identified by the Department of Homeland Security, which means that its reliable operation is so critical that a disruption or loss of electricity will directly affect the security and resilience of other critical infrastructure and the Nation.

The recently released ''Quadrennial Energy Review, Energy Transmission, Storage and Distribution Infrastructure Report, April 2015,'' recommends that ''DOE should coordinate with the Department of Homeland Security and other Federal agencies, States, and industry—an initiative to mitigate the risks associated with the loss of transformers (p. 2–42).'' This request for comment is an initial step in executing that recommendation. Part of the national strategy to reduce risk from large power transformers, which has been under development by the DOE, includes assessing the need for a reserve of LPTs.

II. Request for Information

For the reasons stated above, DOE is exploring possible National strategies to mitigate risk to the reliability of the bulk power system arising from the loss of LPTs. This RFI provides the public, and industry stakeholders, the opportunity to provide their view on the development and structure of a National program to establish and maintain large power transformer reserves in the United States. The intent of this RFI is to solicit information pertinent to the need and viability—regulatory, economic, and technical—of such a program. The information obtained is meant to be used by DOE for program design and strategy development purposes. In your comments, please reference the question(s) to which you are responding. Please also provide supporting information if noted, including studies, reports, data, and examples relevant to mitigating the risks associated with the loss of LPTs.

1. Program Need

Is there a need for a National Power Transformer Reserve? How would such a reserve affect the reliability and resiliency of the North American bulk power system? Are there alternatives to a power transformer reserve program that can help ensure the reliability, resiliency, and recovery of the bulk power system? Is there a need for a nationally-maintained inventory of large power transformers?

2. Power Transformer Criteria

What types and sizes of power transformers should be considered for inclusion in a transformer reserve program versus operational spare capacity? What are the design considerations for replacement transformers to support the bulk power system?

3. Ownership and Economics

What would be an appropriate structure for procuring and inventorying power transformers? How, and by whom, should a program of this type be administered? How would a transformer reserve be funded?

4. Technical Considerations

Is it technically feasible to develop a reserve of large power transformers when most are custom engineered? Is additional research and development (R&D) necessary to develop suitable replacement transformers that can be rapidly deployed from inventory in the event of an emergency?

5. Procurement and Management

How should procurement, maintenance and management of the reserve power transformers be conducted? For example, should manufacturers be pre-qualified, and if so, according to what criteria?

6. Supply Chain

What are the critical supply chain components for the manufacture and delivery of large power transformers (*e.g.,* electrical steel, copper, silicone, high voltage bushings, etc.)? Are there shortages or other considerations that could necessitate using the Defense Production Act Priority Ratings to ensure sufficient parts are available in a time of need? Are there related skilled workforce issues?

7. Manufacturing

Is there adequate manufacturing capacity to support a transformer reserve program? What is the lead time for engineering, manufacture, and delivery of large power transformers? Are there approaches that could help to speed manufacture and delivery of large power transformers?

8. Transport and Deployment

What specialized transport infrastructure would be necessary to ship large power transformers from manufacturing site to storage locations, and from storage locations to field site in the event of an emergency? What should be the number and location of transformer storage sites? What are feasible delivery times for LPTs that reside in a reserve to an affected site?

9. Field Engineering and Installation

Are there adequate domestic engineering and installation resources available throughout the United States to install multiple bulk power transformers simultaneously? What additional resources would be necessary?

10. Criteria for Deploying Transformers

What criteria should be used for activating and deploying transformers from the reserve? How would deployment be funded?

11. Additional Comments

Are there additional concerns regarding a National Power Transformer Reserve Program that need to be considered?

Issued at Washington, DC, on July 2, 2015.

Patricia A. Hoffman,

Assistant Secretary, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–16784 Filed 7–8–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Bioproducts To Enable Biofuels Workshop

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

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE) is announcing a public workshop entitled, ''Bioproducts to Enable Biofuels Workshop''. The Bioenergy Technologies Office (BETO) is seeking to collect information from key industry, university, national laboratory, and other stakeholders regarding challenges associated with the coproduction of biomass derived chemicals, products, and biofuels.

DATES: The public workshop will be held on July 16, 2015, from 8:00 a.m. to 5:30 p.m. MDT in Westminster, Colorado.

ADDRESSES: The meeting will be held at The Westin Westminster, 10600 Westminster Blvd., Westminster, Colorado 80020.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Andrea Bailey at 303–425–6800 ext. 460 or by email at *andrea.bailey@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

BETO seeks to collect information from key industry, university, national laboratory, and other stakeholders regarding the challenges associated with the coproduction of biomass-derived chemicals, products, and biofuels. The following topic areas of interest are intended to be covered at the workshop:

1. Identifying and evaluating economic drivers for producing bioproducts.
2. Identifying and prioritizing targets for bioproducts produced from biofuel waste streams, coproduced with biofuels, or produced at standalone facilities.
3. Identifying research and development challenges associated with bioproducts produced from biofuel waste streams, coproduced with biofuels, or produced at standalone facilities.
4. Identifying environmental considerations (*i.e.,* life-cycle analysis), carbon percentage dedicated to fuels vs. products (*i.e.,* split stream), and ideal intermediates for bioproduct production to enable biofuels.

Public Participation

Members of the public are welcome to attend the workshop. Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m. MDT, July 15, 2015. Early registration is recommended because facilities are limited and, therefore, DOE may limit the number of participants from each organization. To register for the public workshop, please visit *http://www.yesevents.com/MEGABio2015.* Registrants will receive confirmation after they have been accepted. If you need special accommodations due to a disability, please contact Andrea Bailey no later than July 15, 2015.

Issued in Washington, DC, on June 30, 2015.

Kevin Craig,

Program Manager—Bioenergy Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–16786 Filed 7–8–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Information collection extension with changes; notice of request for comments.

SUMMARY: The EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years with the Office of Management and Budget (OMB), the Petroleum Supply Program (OMB No. 1905–0165). EIA is soliciting comments on the proposed revisions to the following forms: EIA–22M, ''Monthly Biodiesel, Biojet, Biokerosene and Renewable Diesel Report,'' (previously the EIA–22M, ''Biodiesel Production Report''), EIA–800, ''Weekly Refinery and Fractionator Report,'' EIA–802, ''Weekly Product Pipeline Report,'' EIA–803, ''Weekly Crude Oil Stocks Report,'' EIA–804, ''Weekly Imports Report,'' EIA–805, ''Weekly Bulk Terminal and Blender Report,'' EIA–809, ''Weekly Oxygenate Report,'' EIA–810, ''Monthly Refinery Report,'' EIA–812, ''Monthly Product Pipeline Report,'' EIA–813, ''Monthly Crude Oil Report,'' EIA–814, ''Monthly Imports Report,'' EIA–815, ''Monthly Bulk Terminal and Blender Report,'' EIA–816, ''Monthly Natural Gas Plant Liquids Report,'' EIA–817, ''Monthly Tanker, Barge and Rail Movement and Stocks in Transit Report'' (previously the ''Monthly Tanker and Barge Movement Report''), EIA–819, ''Monthly Biofuel and Oxygenate Report,'' (previously the ''Monthly Oxygenate Report'' and EIA–820, ''Annual Refinery Report.'' 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 September 8, 2015. 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 Shawna Waugh via email at (*shawna.waugh@eia.gov*). The mailing address is the Petroleum and Biofuels Statistics, EI–25, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. [Note that the receipt of mailed comments is sometimes delayed]

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Shawna Waugh at the address listed above. The proposed forms and changes in definitions and instructions are available on EIA's Web site at: *http://www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1905–0165; (2) Information Collection Request Title: Petroleum Supply Reporting System; (3) Type of Request: Three-year extension; (4) Purpose: The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The weekly petroleum supply surveys (Forms EIA–800, EIA–802, EIA–803, EIA–804, EIA–805 and EIA–809) are designed to provide an early, initial estimate of weekly petroleum refinery and fractionator operations, inventory levels, and imports of selected petroleum products in a timely manner. The information appears in the publications listed below and is also available electronically on EIA's Web site at *http://www.eia.doe.gov/.*

Publications: Internet only publications are the *Weekly Petroleum Status Report* (*http://www.eia.gov/petroleum/supply/weekly/*), *Short-Term Energy Outlook* (*http://www/forecasts/steo/*), and *This Week in Petroleum*

(*http://www.eia.gov/petroleum/weekly/*).

The monthly petroleum supply surveys (Forms EIA–22M, EIA–810, EIA–812, EIA–813, EIA–814, EIA–815, EIA–816, EIA–817, and EIA–819) are designed to provide statistically reliable and comprehensive monthly information to EIA, other Federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis activities. The information appears in the publications listed below and is also available electronically on EIA's Web site at *http://www.eia.doe.gov/*.

Publications: Internet only publications are the *Petroleum Supply Monthly* (*http://www.eia.gov/petroleum/supply/monthly/*), *Company-Level Imports* (*http://www.eia.gov/petroleum/imports/companylevel/*), *the Petroleum Supply Annual, Volume 1* (*http://www.eia.gov/petroleum/supply/annual/volume1/*), *the Annual Energy Outlook* (*http://www.eia.gov/forecasts/aeo/index.cfm*); *and the Monthly Biodiesel Production Report* (*http://www.eia.gov/biofuels/biodiesel/production/*).

The annual refinery survey (Form EIA–820) provides data on refinery capacities, fuels consumed, natural gas consumed as hydrogen feedstock, and crude oil receipts by method of transportation, for operating and idle petroleum refineries (including new refineries under construction), and refineries shutdown during the previous year. The information appears in the *Refinery Capacity Report* (*http://www.eia.gov/petroleum/refinerycapacity/*) and the Refinery Outage Report (*http://www.eia.gov/petroleum/refinery/outage/*).

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the ''For Further Information Contact'' section.

(4a) Proposed Changes to Information Collection: The following changes are proposed to the data elements collected on surveys in the Petroleum Supply Reporting System.

We propose the following changes to the geographical detail collected and published on surveys.

Midwest (Petroleum Administration for Defense District 2): EIA proposes two new subregions for the Midwest, PADD 2. as follows: Subregion PADD 2A will include Minnesota, North Dakota, South Dakota, and Wisconsin and Subregion PADD 2B will include Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Nebraska, Ohio, Oklahoma, and Tennessee. Given the increased production of crude oil in the proposed new PADD 2A Subregion, there is increasing interest in the flows of crude oil into and out of that area. This change will allow EIA to track movements of crude oil from Subregion PADD 2A to other parts of the Midwest and to also provide more detailed regional data on inventories of propane, a key heating fuel, during winter months. This change applies to Forms EIA–812, EIA–813, and EIA–817.

Puerto Rico and the U.S. Virgin Island (PADD 6): We propose to add PADD 6 because this information is needed to report to the International Energy Agency (IEA). This change applies to Forms EIA–813 and EIA–817.

Texas Gulf Coast Refining District: We propose to collect data on crude oil inventories in tank farms in the Texas Gulf Coast as a subset of total PADD 3 inventories, in a manner comparable to those collected for tank farms in Cushing, Oklahoma. The Texas Gulf Coast is composed of the counties that define the Texas Gulf Coast Refinery District. This area includes the Houston Ship Channel and the Corpus Christi area, both areas where crude oil inventory levels are critical for oil markets. This change applies to Forms EIA–803 and EIA–813.

We propose to revise and rearrange categories for reporting biofuel, distillate fuel oil (by sulfur category), hydrocarbon gas liquids, kerosene-type jet fuel, and motor gasoline on select surveys as indicated below.

Biofuels: We propose to collect data on biofuel products for the following categories (and subcategories): Ethanol (cellulosic and noncellulosic), Butanol, Biodiesel, Biojet and biokerosene (cellulosic and noncellulosic), bionaphtha and biogasoline (cellulosic and noncellulosic), and other (cellulosic and noncellulosic). This change assures continued relevance of the data and improves market coverage by accommodating potential for introduction of new biofuels. This change applies to all the monthly survey forms except Forms EIA–813 and EIA–816.

Distillate Fuel Oil: We propose to reduce from four to three the number of categories of distillate fuel oil, based on sulfur content. We currently collect the following four distillate categories (by sulfur content): (1) Less than 15 parts per million (ppm), (2) 15–500 ppm, (3) 500–2000 ppm, and (4) greater than or equal to 2000 ppm. We plan to merge the latter two categories, 500–2000 ppm, and greater than or equal to 2000 ppm, into a single category—distillates with greater than 500 ppm of sulfur. Federal and State legislation requires more areas to use distillate fuel that contains less than 15 ppm sulfur, also known as Ultra Low Sulfur Diesel (ULSD) Many Northeast states also require that ULSD be used for heating purposes. While there are diminishing volumes of 15–500 ppm distillate fuel produced currently, capturing its production and disposition is important for maintaining data quality control, so we've proposed to continue collecting it even though we intend to publish data for the categories of ULSD and other distillate fuel.

Hydrocarbon Gas Liquids (formerly Natural Gas Plant Liquids (NGPL) and Liquefied Refinery Gases (LRG): We propose to adopt EIA's framework for Hydrocarbon Gas Liquid that was described in the report ''Hydrocarbon Gas Liquids (HGL): Recent Market Trends and Issues,'' released November, 2014, and available at *http://www.eia.gov/analysis/hgl.* We have rearranged the existing categories to include the following categories (and sub-categories): Ethane/Ethylene (Ethane by sources (Gas Plant and Refinery) and Ethylene); Propane/Propylene (Propane by source (Gas Plant and Refinery)) and Propylene); Normal Butane/Butylene (Normal Butane by sources (Gas Plant and Refinery (Refinery Grade and excluding Refinery Grade)) and Butylene); Isobutane/Isobutylene (Isobutane by sources (Gas Plant and Refinery) and Isobutylene; Natural Gasoline (previously Pentanes Plus). We also propose to add categories for Plant Condensate and Consumer and Export-Grade Propane. The primary reason for this rearrangement of categories and subcategories is to use the same categories to collect data consistently across all EIA surveys. This change applies to all of the survey forms except for Forms EIA–22M, 803, 809, and 813.

Kerosene-type Jet Fuel: We propose to discontinue breaking out the end use categories of commercial and military and only collect total kerosene jet-fuel as a single category. Military jet fuel represents less than three percent (3%) of all jet fuel produced in 2014. We expect sales for military use to continue to decline further as a result of the military's decision to allow military aircraft to use commercial grade jet fuel. We do not foresee any impact on analytical capabilities as a result of this change. This change applies only to Forms EIA–800 and EIA–810.

Motor Gasoline: We propose to reduce the number of motor gasoline categories from nine to five. We propose to collect the following data on motor gasoline

and blending components: Motor gasoline blended with less than 51 volume percent ethanol (<E51), motor gasoline blended with 51 volume percent ethanol or more (≥E51), motor gasoline not blended with ethanol, motor gasoline blending components, and reformulated blendstock for oxygenate blending (RBOB). Currently, the gasoline categories are based upon reformulated and conventional gasoline. The new categories EIA proposes are based on gasoline with ethanol and gasoline without ethanol. We expect this change will support and improve the utility of the information needed for important analytical and policy issues relating to gasoline markets at this time and in the future. This change applies to all of the survey forms except for Forms EIA–22M, 803, 809, and 813.

Pipeline and Tank Farm activities: We propose to collect data separately for pipelines and tank farms. These changes apply to the following Forms: EIA–803 and EIA–813.

Storage Capacity: We propose to discontinue storage capacity on Forms EIA–812 and EIA–819. We currently collect storage capacity twice a year (as of March 31 and September 30). Collecting storage capacity of product pipelines and ethanol plants did not provide useful information for assessing available petroleum supplies. Product pipeline inventories are used for operational purposes, not commercial purposes. Stocks held at fuel ethanol plants also are primarily for operational rather than commercial purposes. EIA will still collect storage capacity data for petroleum products held at terminals and refineries. Discontinuing the collection of storage capacity on Forms EIA–812 and EIA–819 will eliminate confusion in analyzing storage capacity utilization and improve data quality.

Storage Capacity in Operation: We propose to discontinue reporting storage capacity by the subcategories for exclusive use and leased to others on Forms EIA–813 and EIA–815. This data is no longer needed for analysis purposes.

Stocks in Transit: We propose to discontinue collecting stocks in transit by tanker, barge and rail on Forms EIA–800, 802, 803, 805, 809, 810, 812, 813, 815, 816, and 819. EIA proposes to collect the stocks in transit data at the corporate level on the EIA–817. Collecting this stock information on one form reduces respondent burden and will improve data quality.

Unit of Measurement: We propose to collect data in actual barrels rather than thousand barrels. For some of our data collection we are missing small volumes from respondents because they are reporting in thousands of barrels. These missing volumes may not add up to a large volume, but data for some small-volume products, such as certain biofuels and fuels blended with biofuels, are important for assessment of important policy decisions. For example, if a respondent produces less than 500 barrels of E85, they would report that production as zero (0) when using current thousand barrels reporting units. Under this proposal, they would report the actual volume they produced. Rather than collecting information by two different units of measurement using barrels, EIA proposes to apply this change consistently across all of the surveys except for the EIA–22M which collects data in gallons.

We propose to make the following survey-specific changes to forms in this program.

We propose to change the scope and title of the EIA–22M, ''Monthly Biodiesel Production Report'' to the EIA–22M, ''Biodiesel, Biojet, Biokerosene and Renewable Diesel Report.'' We are expanding the survey to collect data on renewable fuels in addition to biodiesel as growth is anticipated in the renewable fuels industry in the future.

We propose to eliminate parts 3D ''Sales of B100 and blended biodiesel'' and 3E ''End use sales of biodiesel'' from the current Form EIA–22M. Data from these sections of the survey form were found not to be useful for analysis of available biodiesel supplies.

We propose to expand part 2A of the existing Form EIA–22M to include capacities of renewable diesel fuel plants in addition to biodiesel producers. We also propose to expand part 3A of the existing Form EIA–22M to account for production and blending of noncellulosic biofuels (biojet, biokerosene, renewable diesel fuel, and other) and cellulosic biofuels (cellulosic distillate fuel, cellulosic biojet and biokerosene, and other). Information on production and blending are relevant to understand activities of the renewable and biofuel industries.

We propose to collect Input and Production of Unfinished Oils instead of Total Input'' on Part 3: Refinery and Fractionator Activity on Form EIA–800, ''Weekly Refinery and Fractionator Report.'' We are trying to collect more relevant data for data users on refinery activities.

We propose to discontinue collecting data on volumes of Ultra-Low Sulfur Diesel Fuel (15 ppm and under) downgraded during the report week on Part 4: Diesel Fuel Downgrade on Form EIA–802, ''Weekly Product Pipeline Report.'' This data is no longer relevant.

We propose to change the list of countries in Part 4: Total U.S. Crude Oil Imports by Country of Origin and to adopt the U.S. Census Bureau's country codes on Form EIA–804, ''Weekly Imports Report.'' We propose to allow companies to report imports from 31 countries from which the U.S. imported the most crude oil during 2015, and for Iran. Crude oil imports from any other countries are reported in the ''Other'' country category. We anticipate this change will enhance information quality.

We propose to collect ethanol and to discontinue collecting denatured and undenatured ethanol separately on Form EIA–809, ''Weekly Oxygenate Report.''

We propose to discontinue collecting lease inventories on Form EIA–813, ''Monthly Crude Oil Report.'' Lease inventories are inventories stored at crude oil production sites. The purpose of stocks held on oil and gas producing leases (lease stocks) is to facilitate oil and gas production operations. Lease stocks are typically held only long enough for oil to be picked up by trucks or otherwise removed from production sites. While the total number of barrels held as lease stocks is significant, the barrels are widely dispersed at producing sites with only small quantities at any given location. For these reasons, we have determined that continued tracking of lease stocks on EIA surveys has limited value for assessment of crude oil supplies available to markets. In addition, our research has shown that some or all of the barrels included as lease stocks are actually outside of the U.S. and regional crude oil balances developed by EIA because barrels may be recorded as crude oil production, which is the first supply component of our balance, only after the barrels are withdrawn from lease stocks. EIA will create and publish historical data series of crude oil stocks excluding lease stocks in order to meet analyst requirements for crude oil inventory data that are consistent over time.

We propose to continue to collect data on API gravity, sulfur content, processing plant name and location of crude oil and to continue to collect data on sulfur categories for distillate fuels. However, we will discontinue collecting data for the processing plants name and location of unfinished oils and motor gasoline blending components on Form EIA–814, ''Monthly Imports Report.'' We have determined that the data proposed for elimination on Form EIA–814 have limited value and the respondent burden for reporting was not justified.

No additional changes proposed for Form EIA–815, ''Monthly Terminal Blenders Report.''

We propose to add plant condensate to Part 2 of Form EIA–816, ''Monthly Natural Gas Liquids Report.'' In addition, we are asking in Part 2 for the volume blended into crude oil. The quantity of plant condensate blended into crude oil is important as a way to balance crude oil supply and disposition and thereby reduce the crude oil adjustment (unaccounted-for crude oil) quantity.

We propose to change the title of Form EIA–817, ''Monthly Tanker and Barge Movements Report'' to EIA–817, Monthly Tanker, Barge, and Rail Movements and Stocks in Transit Report.'' We intend to collect rail movements and stocks in transit for all Petroleum Administration for Defense Districts (PADDs) and select sub-PADDs on this survey. Rail movements of crude oil and petroleum products have increased in recent years due to changes in the regional distribution of crude oil, petroleum product, and biofuel supplies. Based on cognitive interviews with companies that report on Form EIA–817, respondents indicated that reporting stocks in transit on a company basis reduces respondent burden and improves data quality.

We propose to change the title of Form EIA–819 ''Monthly Oxygenate Report'' to EIA–819 ''Monthly Biofuel and Oxygenate Report''. We also plan to reorganize the Form EIA–819 to clarify reporting requirements. The new Form EIA–819 will have separate sections for reporting biofuel production, non-biofuel oxygenate production, and blending activity involving biofuels, petroleum products, and hydrocarbon gas liquids. In addition, product details will be added to identify products as non-cellulosic biofuels (ethanol, butanol, bionaphtha and biogasoline, and other) and cellulosic biofuels (cellulosic ethanol, cellulosic naphtha and gasoline, and other). Currently EIA collects petroleum refinery fuel consumption data, but not renewable fuel plant consumption data. Collecting this data will allow analysts and modelers to gauge trends in energy efficiency at ethanol and biodiesel plants as they do now with data collected from petroleum refineries.

Gasoline products included in Part 6 ''Blending Activity including Addition of Denaturants'' will be updated with new gasoline products described earlier. We also propose to add normal butane and isobutane in addition to natural gasoline (formerly pentanes plus) to Part 6. We are also expanding the coverage from the 50 states and the District of Columbia, to the 50 states, the District of Columbia and the Virgin Islands and Puerto Rico.

In addition to clarifying reporting requirements by separating activities into separate sections of the form, the addition of new products will position EIA to provide data on new biofuel products that may become important sources of U.S. fuel supplies.

We propose to redesign the layout of Part 1 and 2 of the forms due to the new electronic modes of data collection. Most of this information will be prepopulated and we will use skip patterns to request respondents provide updates as needed. We are doing this to reduce respondent burden. This change applies to all of the surveys.

Please refer to the proposed forms and instructions for more information about the purpose of the survey, who must submit, when to submit, provision for confidentiality, elements to be reported, and uses (including nonstatistical uses) of the information. These materials are available on EIA's Web site at *http://www.eia.gov/survey/.*

(5) Annual Estimated Number of Respondents: 4,503.

(6) Annual Estimated Number of Total Responses: 102,656.

(7) Annual Estimated Number of Burden Hours: 198,321.

(8) Annual Estimated Reporting and Recordkeeping Cost Burden: EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $14,273,162 (198,321 burden hours times $71.97 per hour), which represents a reduction of 15,241 burden hours from the prior renewal of this collection in 2013. Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, July 2, 2015.

Nanda Srinivasan,

Director, Survey Development and Statistics Integration, U.S. Energy Information Administration.

[FR Doc. 2015–16783 Filed 7–8–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9926–06–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Alaska's request to revise/modify its EPA Administered Permit Programs: The National Pollutant Discharge Elimination System EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective July 9, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document

receiving systems that meet the applicable subpart D requirements.

On January 20, 2010, the Alaska Department of Environmental Conservation (ADEC) submitted an application titled ''Water Online Application System (OASys)'' for revision/modification of its EPA-authorized authorized Part 123 program under title 40 CFR. EPA reviewed ADEC's request to revise/modify its EPA-authorized Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision/modification set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Alaska's request to revise/modify its Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program to allow electronic reporting under 40 CFR part 122 is being published in the **Federal Register**.

ADEC was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–16252 Filed 7–8–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9930–36–Region 8]

Proposed Settlement Agreement for Iron Springs Mining District Site, Uncompahgre National Forest, San Miguel County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given of the proposed Administrative Settlement between the U.S. Environmental Protection Agency (EPA) and Department of Agriculture Forest Service (USFS) (collectively the ''Agencies''), and Union Oil Company of California, Inc. (hereinafter referred to as ''the Settling Party''). The Settling Party will pay within 30 days after the effective date of this Proposed Agreement ($403,300) to the EPA, ($14,573) to the U.S. Department of Agriculture, and ($357,677) to the USFS for past response costs. The covenants provided by the Agencies to the Settling Party are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. The payments made by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party.

DATES: Comments must be submitted on or before August 10, 2015.

ADDRESSES: The proposed agreement is available by appointment for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, Denver, Colorado 80202–1129, during normal business hours. Appointments for review may be made by calling the EPA Superfund Records Center at (303) 312–7273. Comments and requests for a copy of the proposed agreement should be addressed to Michael Rudy, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Iron Springs Mining District Site, the EPA Docket No. CERCLA–08–2015–0005.

FOR FURTHER INFORMATION CONTACT: Michael Rudy, Enforcement Specialist, Environmental Protection Agency, Region 8, Mail Code 8ENF–ENF, at the above address, (303) 312–6332.

Dated: June 16, 2015.

Kelcey Land,

Director, Technical Enforcement Program, Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2015–16810 Filed 7–8–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0278; FRL–9926–69–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Participation by Disadvantaged Business Enterprises in Procurements Under EPA Financial Assistance Agreements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements (Renewal)'' (EPA ICR No. 2047.05, OMB Control No. 2090–0030) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2015. Public comments were previously requested via the **Federal Register** (80 FR 10087) on February 25, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 10, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0278 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Teree Henderson, Office of Small Business Programs, mail code: 1230T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–2222; fax number: 202–566–0548; email address: *Henderson.Teree@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA currently requires an entity to be certified in order to be considered a Minority Business Enterprise (MBE) or Women's Business Enterprise (WBE) under EPA's Disadvantaged Business Enterprise (DBE) Program. To qualify as an MBE or WBE under EPA's programs, an entity must establish that it is owned and/or controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States. The EPA DBE Program also includes contract administration requirements designed to prevent unfair practices that adversely affect DBEs.

Form Numbers: 6100–1a, 6100–1b, 6100–1c, 6100–1d, 6100–1e, 6100–1f, 6100–1g, 6100–1h, 6100–1i, 6100–2, 6100–3, and 6100–4.

Respondents/Affected Entities: All recipients of EPA financial assistance agreements, and entities receiving identified loans under a financial assistance agreement capitalizing a revolving loan fund.

Respondent's Obligation to Respond: Required to obtain or retain a benefit per 40 CFR part 33, subpart B and 40 CFR part 33, subpart E.

Estimated Number of Respondents: 1,865 (total).

Frequency of Response: Certification: On occasion.

Total Estimated Burden: 11,614 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $362,712 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–16751 Filed 7–8–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–627]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Federal Lifeline Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Icon Telecom, Inc.'s (Icon or Company) suspension from the federal Lifeline universal service support mechanism (Lifeline program) and the commencement of debarment proceedings against the Company. Suspension immediately excludes Icon from activities associated with or related to the Lifeline program pending completion of the debarment process. Icon, or any person who has an existing contract with or intends to contract with the Company to provide or receive services in matters arising out of activities associated with or related to the Lifeline program, may contest this suspension or its scope by filing an opposition and any relevant documentation.

DATES: Any opposition must be received within 30 days from the receipt of the suspension letter or July 9, 2015, whichever comes first. The Bureau will decide any opposition within 90 days of its receipt.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A422, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Lewis, Paralegal Specialist, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A422, 445 12th Street SW., Washington, DC 20554. Celia Lewis may be contacted by telephone at (202) 418–7456 or email at *Celia.Lewis@fcc.gov.* If Ms. Lewis is unavailable, you may contact Mr. Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418–0796 or email at *Kalun.Lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 0.111(a)(14). Icon's conviction for making a false statement in violation of 18 U.S.C. 1002(a)(2), in connection with fraudulent claims against the Lifeline program, requires the Bureau to suspend the Company from participating in activities associated with the Lifeline program. Attached is the notice of suspension and initiation of debarment proceeding (Notice of Suspension), DA 15–627, which was mailed to Icon and released on May 26, 2015. The complete text of the Notice of Suspension is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Chief, Investigations and Hearings Division, Enforcement Bureau.

May 26, 2015

DA 15–627

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Wes Yui Chew, President, Icon Telecom, Inc., c/o Daniel G. Webber, Jr., Ryan Whaley Coldiron Shandy PLLC, 119 N. Robinson Avenue, Suite 900, Oklahoma City, OK 73102

Re: Notice of suspension and initiation of debarment proceeding File No. EB–IHD–15–00019108

Dear Mr. Chew: The Federal Communications Commission (Commission) has received notice of the conviction of Icon Telecom, Inc. (Icon or Company) for making a false statement in violation of 18 U.S.C. 1002(a)(2), in connection with fraudulent claims against the federal Lifeline telephone program (Lifeline program).[1] Pursuant to its rules, the Enforcement Bureau (Bureau) hereby suspends Icon from participating in activities associated with the Lifeline program.[2] The Bureau is also commencing a proceeding to debar Icon from future participation in the Lifeline program.[3]

I. Notice of Suspension

Any corporation that has ''defrauded the government or engaged in similar acts through activities associated with or related to the [Lifeline program]'' may be prohibited from receiving the benefits associated with that program.[4] The Lifeline program is a government program that provides support to eligible telecommunications carriers (ETCs) that in turn offer discounts on telephone service for eligible low-income consumers.[5]

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent sentencing in *United States* v. *Icon Telecom,* Criminal Docket No. 5:14–cr–00170–D, Plea Agreement (W.D. Okla. filed June 12, 2014) (*Plea Agreement*). *See also Lifeline and Link Up Reform and Modernization*, WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

[2] 47 CFR 54.8.

[3] *Id.;* 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms, including Lifeline. *See Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[4] *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[5] *See Lifeline Reform Order*, 27 FCC Rcd at 6662–67, paras. 11–18; *see also* 47 CFR 54.400–54.422.

An ETC may receive reimbursement in connection with the Lifeline program only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline rules.[6]

Icon participated in the Lifeline program from July 2011 until September 2013.[7] On June 12, 2014, Icon pled guilty to knowingly making a false statement to the Universal Service Administrative Company [8] through its submission of 58 fabricated customer recertification forms, which included fictitious signatures, in response to an audit request.[9]

Pursuant to section 54.8(b) of the Commission's rules,[10] Icon's conviction requires the Bureau to suspend it from participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.[11] Icon's suspension becomes effective upon either its receipt of this letter or publication of the suspension in the **Federal Register**, whichever comes first.[12]

In accordance with the Commission's suspension and debarment rules, Icon may contest this suspension or its scope by filing arguments, with any relevant documents, within thirty (30) calendar days of its receipt of this letter or publication of the suspension in the **Federal Register**, whichever comes first.[13] Such requests, however, will not ordinarily be granted.[14] The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.[15] The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.[16]

II. Initiation of Debarment Proceedings

In addition to Icon's immediate suspension from the Lifeline program, its conviction is cause for debarment as defined in section 54.8(c) of the Commission's rules.[17] Therefore, pursuant to section 54.8(b) of the Commission's rules, Icon's conviction requires the Bureau to commence debarment proceedings against it.[18]

As with the suspension process, Icon may contest the proposed debarment or its scope by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[19] The Bureau, in the absence of extraordinary circumstances, will notify Icon of its decision to debar within ninety (90) calendar days of receiving any information it may have filed.[20] If the Bureau decides to debar the Company, its decision will become effective upon either Icon's receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[21]

If and when Icon's debarment becomes effective, it will be prohibited from participating in activities associated with or related to the Lifeline program for three years from the date of debarment.[22] The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[23]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554 and to the attention of Celia Lewis, Paralegal Specialist, Investigations and Hearings Division, Enforcement Bureau, Room 4–A422, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 with a copy to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C237, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. All messenger or hand delivery filings must be submitted without envelopes.[24] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Celia Lewis, Paralegal Specialist, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–A422, Washington, DC 20554, with a copy to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–C237, Washington, DC 20554. You shall also transmit a copy of your response via email to Celia Lewis, *Celia.Lewis@fcc.gov,* and Kalun Lee, *Kalun.Lee@fcc.gov.*

If you have any questions, please contact Ms. Lewis via U.S. postal mail, email, or by telephone at (202) 418–7456. If Ms. Lewis is unavailable, you may contact Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418–0796 or at the email address noted above.

Sincerely yours,

Jeffrey J. Gee
Chief Investigations and Hearings Division
Enforcement Bureau

cc: Johnnay Schrieber, Universal Service Administrative Company (via email); Rashann Duvall, Universal Service Administrative Company (via email); Chris M. Stevens, United States Attorney's Office, Western District of Oklahoma (via email); Scott E. Williams, United States Attorney's Office, Western District of Oklahoma (via email)

[FR Doc. 2015–16777 Filed 7–8–15; 8:45 am]

BILLING CODE 6712–01–P

[6] *See* 47 CFR 54.407(d).

[7] *United States* v. *Icon Telecom,* Criminal Docket No. 5:14–cr–00170–D, Information at 4 (W.D. Okla. filed June 3, 2014) (*Information*).

[8] The Universal Service Administrative Company (USAC) is an independent, not-for-profit corporation designated by the Commission as the administrator of the Lifeline program. *See* About USAC, *http://www.usac.org/about/.*

[9] *Information* at 8; *Plea Agreement* at 2; *see also* United States Attorney's Office, Western District of Oklahoma, Press Release, *Icon Telecom and Its Owner Plead Guilty And Agree To Forfeit More Than $27 Million In Connection With Federal Wireless Telephone Subsidy Program,* June 12, 2014, *available at http://www.justice.gov/usao-wdok/pr/icon-telecom-and-its-owner-plead-guilty-and-agree-forfeit-more-27-million-connection.*

[10] 47 CFR 54.8(a)(4); *see Program Management Order,* 22 FCC Rcd at 16387, para. 32.

[11] 47 CFR 54.8(a)(1), (d).

[12] *Id.* § 54.8(e)(1).

[13] *Id.* § 54.8(e)(4).

[14] *Id.*

[15] *Id.* § 54.8(f).

[16] *Id.* §§ 54.8(e)(5), (f).

[17] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' *Id.* § 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' *Id.* § 54.8(a)(1).

[18] *Id.* § 54.8(b).

[19] *Id.* § 54.8(e)(3).

[20] *Id.* § 54.8(e)(5).

[21] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* § 54.8(f).

[22] *Id.* § 54.8(d), (g).

[23] *Id.* § 54.8(g).

[24] *See* FCC *Public Notice,* DA 09–2529 for further filing instructions (rel. Dec. 3, 2009).

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–669]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Federal Lifeline Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Oscar Enrique Perez-Zumaeta's suspension from the federal Lifeline universal service support mechanism (Lifeline program) and the commencement of debarment proceedings against him. Suspension immediately excludes Mr. Perez-Zumaeta from activities associated with or related to the Lifeline program pending completion of the debarment process. Mr. Perez-Zumaeta, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the Lifeline program, may

contest this suspension or its scope by filing an opposition and any relevant documentation.

DATES: Any opposition must be received within 30 days from the receipt of the suspension letter or July 9, 2015, whichever comes first. The Bureau will decide any opposition within 90 days of its receipt.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A422, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Lewis, Paralegal Specialist, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A422, 445 12th Street SW., Washington, DC 20554. Celia Lewis may be contacted by telephone at (202) 418–7456 or email at *Celia.Lewis@fcc.gov.* If Ms. Lewis is unavailable, you may contact Mr. Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418–0796 or email at *Kalun.Lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 0.111(a)(14). Mr. Perez-Zumaeta's conviction for money laundering in violation of 18 U.S.C. 1957(a) and 18 U.S.C. 2, in connection with fraudulent claims against the Lifeline program, requires the Bureau to suspend him from participating in activities associated with the Lifeline program. Attached is the notice of suspension and initiation of debarment proceeding (Notice of Suspension), DA 15–669, which was mailed to Mr. Perez-Zumaeta and released on June 8, 2015. The complete text of the Notice of Suspension is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Chief, Investigations and Hearings Division, Enforcement Bureau.

June 08, 2015
DA 15–669

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Oscar Enrique Perez-Zumaeta, c/o William P. Earley, Federal Public Defender-OKC, 215 Dean A McGee Ave., Suite 109, Oklahoma City, OK 73102

Re: Notice of suspension and initiation of debarment proceeding, File No. EB–IHD–15–00019209

Dear Mr. Perez-Zumaeta: The Federal Communications Commission (Commission) has received notice of your conviction for money laundering in violation of 18 U.S.C. 1957(a) and 18 U.S.C. 2, in connection with fraudulent claims against the federal Lifeline universal service support mechanism (Lifeline program).[1] Pursuant to its rules, the Enforcement Bureau (Bureau) hereby suspends you from participating in activities associated with the Lifeline program.[2] The Bureau is also commencing a proceeding to debar you from future participation in the Lifeline program.[3]

Any person who has ''defrauded the government or engaged in similar acts through activities associated with or related to the [Lifeline program]'' may be prohibited from receiving the benefits associated with that program.[4] The Lifeline program is a government program that provides support to eligible telecommunications carriers (ETCs) that in turn offer discounts on telephone service for eligible low-income consumers.[5] An ETC may receive reimbursement in connection with the Lifeline program only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline rules.[6]

You owned and managed PSPS Sales LLC (PSPS), a California entity that recruited low-income individuals to apply for Lifeline telephone service through Icon Telecom, Inc. (Icon).[7] On June 12, 2014, Icon pled guilty to knowingly making a false statement to the Universal Service Administrative Company in connection with fraudulent claims against the Lifeline program.[8] According to court records, you were charged with directing PSPS workers to enroll fictitious customers and falsify Lifeline recertification forms for use in Icon's fraudulent scheme.[9] On November 7, 2014, you pled guilty to one count of money laundering for depositing a $52,390.00 check from Icon into a PSPS bank account, despite knowing that more than $10,000.00 of those funds was the result of criminal fraud against the Commission.[10]

Pursuant to section 54.8(b) of the Commission's rules,[11] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.[12] Your suspension becomes effective upon either your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[13]

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or its scope by filing arguments, with any relevant documents, within thirty (30) calendar days of your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[14] Such requests, however, will not ordinarily be granted.[15] The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.[16] The Bureau will decide any request to reverse or modify a suspension within ninety (90)

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent sentencing in *United States* v. *Perez-Zumaeta,* Criminal Docket No. 5:14–cr–00165–D–1, Plea Agreement (W.D. Okla. filed Nov. 07, 2014) (*Plea Agreement*). *See also Lifeline & Link Up Reform & Modernization,* WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

[2] 47 CFR 54.8.

[3] *Id.;* 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms, including Lifeline. *See Comprehensive Review of the Universal Serv. Fund Mgmt., Admin., & Oversight,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[4] *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[5] *See Lifeline Reform Order,* 27 FCC Rcd at 6662–67, paras. 11–18; *see also* 47 CFR 54.400–54.422.

[6] *See* 47 CFR 54.407(d).

[7] *United States* v. *Perez-Zumaeta,* Criminal Docket No. 5:14–cr–00165–D–1, Indictment at 1–2 (W.D. Okla. filed June 03, 2014) (*Indictment*).

[8] *United States* v. *Icon Telecom, Inc.,* Criminal Docket No. 5:14–cr–00170–D, Plea Agreement (W.D. Okla. filed June 12, 2014).

[9] *Indictment* at 8–10.

[10] *Plea Agreement* at 2; *Indictment* at 16–17; *see also* United States Attorney's Office, western District of oklahoma, Press Release, *Final Defendant Sentenced to Serve 42 Months in Prison for Money Laundering in Connection with Federal Wireless Telephone Program Subsidies,* Apr. 23, 2015, *available at http://www.justice.gov/usao-wdok/pr/final-defendant-sentenced-serve-42-months-prison-money-laundering-connection-federal.*

[11] 47 CFR 54.8(a)(4); *see Program Management Order,* 22 FCC Rcd at 16387, para. 32.

[12] 47 CFR 54.8(a)(1), (d).

[13] *Id.* § 54.8(e)(1).

[14] *Id.* § 54.8(e)(4).

[15] *Id.*

[16] *Id.* § 54.8(f).

calendar days of its receipt of such request.[17]

I. Initiation of Debarment Proceedings

In addition to your immediate suspension from the Lifeline program, your conviction is cause for debarment as defined in section 54.8(c) of the Commission's rules.[18] Therefore, pursuant to section 54.8(b) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[19]

As with the suspension process, you may contest the proposed debarment or its scope by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[20] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.[21] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[22]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the Lifeline program for three years from the date of debarment.[23] The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[24]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554 and to the attention of Celia Lewis, Paralegal Specialist, Investigations and Hearings Division, Enforcement Bureau, Room 4–A422, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 with a copy to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C237, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. All messenger or hand delivery filings must be submitted without envelopes.[25] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Celia Lewis, Paralegal Specialist, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–A422, Washington, DC 20554, with a copy to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–C237, Washington, DC 20554. You shall also transmit a copy of your response via email to Celia Lewis, *Celia.Lewis@fcc.gov,* and Kalun Lee, *Kalun.Lee@fcc.gov.*

If you have any questions, please contact Ms. Lewis via U.S. postal mail, email, or by telephone at (202) 418–7456. If Ms. Lewis is unavailable, you may contact Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418–0796 or at the email address noted above.

Sincerely yours,

Jeffrey J. Gee
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Johnnay Schrieber, Universal Service Administrative Company (via email); Rashann Duvall, Universal Service Administrative Company (via email); Chris M. Stevens, United States Attorney's Office, Western District of Oklahoma (via email); Scott E. Williams, United States Attorney's Office, Western District of Oklahoma (via email)

[FR Doc. 2015–16778 Filed 7–8–15; 8:45 am]

BILLING CODE 6712–01–P

[17] *Id.* §§ 54.8(e)(5), (f).

[18] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' *Id.* § 54.8(a)(1).

[19] *Id.* § 54.8(b).

[20] *Id.* § 54.8(e)(3).

[21] *Id.* § 54.8(e)(5).

[22] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* § 54.8(f).

[23] *Id.* § 54.8(d), (g).

[24] *Id.* § 54.8(g).

[25] *See* FCC *Public Notice,* DA 09–2529 for further filing instructions (rel. Dec. 3, 2009).

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, July 14, 2015 at 10:00 a.m. and Thursday, July 16, 2015 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 52 U.S.C. 30109.

Internal personnel rules and internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,
Deputy Secretary of the Commission.

[FR Doc. 2015–16917 Filed 7–7–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Labor Relations Authority (FLRA) publishes the names of the persons selected to serve on its SES Performance Review Board (PRB). This notice supersedes all previous notices of the PRB membership.

DATES: Upon publication.

ADDRESSES: Written comments about this final rule can be emailed to *engagetheFLRA@flra.gov* or sent to the Case Intake and Publication Office, Federal Labor Relations Authority, 1400 K Street NW., Washington, DC 20424. All written comments will be available for public inspection during normal

business hours at the Case Intake and Publication Office.

FOR FURTHER INFORMATION CONTACT: Gina Grippando, Counsel for Regulatory and Public Affairs, Federal Labor Relations Authority, Washington, DC 20424, (202) 218–7776.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more PRBs. The PRB shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on the FLRA's PRB.

William R. Tobey, Chief Counsel; H. Joseph Schimansky, Executive Director, Federal Service Impasses Panel; James E. Petrucci, Director, Dallas Regional Office; Peter A. Sutton, Deputy General Counsel; Sarah Whittle Spooner, Executive Director.

Dated: July 1, 2015.

Sarah Whittle Spooner,

Executive Director.

[FR Doc. 2015–16771 Filed 7–8–15; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before September 8, 2015.

ADDRESSES: You may submit comments, identified by FR Y–15, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ≤regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: The Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Frequency: Quarterly.

Reporters: U.S. bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with $50 billion or more of total consolidated assets and any U.S.-based organizations designated as global systemically important banks (G–SIBs) that do not otherwise meet the consolidated assets threshold for BHCs.

Estimated annual reporting hours: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—54,536 hours.

Estimated average hours per response: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—401 hours.

Number of respondents: 34.

General description of report: This information collection is mandatory and is authorized by the Dodd-Frank Act (sections 163, 165, and 604), the

International Banking Act, the Bank Holding Company Act, and the Home Owners' Loan Act (12 U.S.C. 1462, 1467, and 3106).

Abstract: The FR Y–15 report collects systemic risk data from U.S. BHCs and SLHCs with total consolidated assets of $50 billion or more, and any U.S.-based organization identified as a global systemically important bank (G–SIB) [1] based on data from the previous calendar year that does not otherwise meet the consolidated assets threshold for BHCs. The Federal Reserve uses the FR Y–15 data primarily to monitor, on an ongoing basis, the systemic risk profile of the institutions which are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).[2]

Current Actions: The Federal Reserve proposes the following revisions to the FR Y–15, which would be effective December 31, 2015:

Schedule A—Size Indicator

In September 2014, the Federal Reserve, together with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, revised the definition of ''total leverage exposure'' used to calculate a BHC's supplementary leverage ratio.[3] To reflect the revised leverage ratio standard and accompanying disclosure table, the Federal Reserve proposes to collect 10 new items: Posted cash collateral used to offset the negative mark-to-fair value of derivative contracts (item 1(c)), cash variation margin included as an on-balance sheet receivable (item 1(e)), exempted central counterparty legs of client-cleared transactions included in on-balance sheet assets (item 1(f)), effective notional amount offsets and potential future exposure (PFE) adjustments for sold credit protection (item 1(g)), total derivative exposures (item 1(h)), securities financing transaction (SFT) indemnification and other agent-related exposures (item 2(c)), gross value of offsetting cash payables (item 2(d)), total SFT exposures (item 2(e)), other on-balance sheet assets (item 3(a)), and the credit exposure equivalent of other off-balance sheet items (item 4(e)). To maintain consistency with the exposures definition used in the international G–SIB methodology, the Federal Reserve proposes to also collect total exposures prior to regulatory deductions (item 5).

The Federal Reserve proposes to remove nine line items that are not used in the calculation. Four of these are provided by respondents [cash collateral netted against the derivative exposures in item 1(c)(1) (item 1(c)(2)); credit derivatives sold net of related credit protection bought, adjusted for maturity (item 2(b)(3)); unconditionally cancellable credit card commitments (item 2(c)(1)); and other unconditionally cancellable commitments (item 2(c)(2))], two are automatically retrieved from the FR Y–9C (FR Y–9C; OMB No. 7100–0128) [total assets (item 1(a)) and net value of SFTs (item 1(b)(1)], and three are automatically calculated on behalf of the respondent [total on-balance sheet items (item 1(d)), total off-balance sheet items (item 2(g)), and total exposures (item 4)].

The Federal Reserve proposes to adjust the position and names of the remaining items to conform to the revised presentation of the data. This includes moving three of the remaining items which are not required for the exposures calculation to a new memoranda section.

Consistent with the supplementary leverage ratio adopted in September 2014, the Federal Reserve proposes to collect average values over the reporting period.[4] For on-balance sheet items, the Federal Reserve proposes collecting averages using daily data. For off-balance sheet items, the Federal Reserve proposes collecting averages using monthly data. This would affect the definitions for all items in Schedule A.

Schedule B—Interconnectedness Indicators

The intra-financial system assets (IFSA) indicator captures the amount of funds deposited with and lent to other financial institutions (item 1), while intra-financial system liabilities (IFSL) only captures deposits. In accordance with the international standard that will be adopted starting with the end-2015 collection,[5] the Federal Reserve proposes to correct this asymmetry by adding a new item, borrowings obtained from other financial institutions (item 8), to the IFSL total.

Under the current definitions, certificates of deposit are included in both the IFSL and securities outstanding indicators. To eliminate this double counting, the Federal Reserve proposes to remove certificates of deposit from deposits due to depository institutions (item 7(a)) and deposits due to non-depository institutions (item 7(b)). This change is also scheduled to be adopted in the international standard starting with the end-2015 collection.[6]

To capture a more holistic measure of securities holdings, the Federal Reserve proposes to update the definition of holdings of securities issued by other financial institutions (item 3) to include the historical cost of equity securities without readily determinable fair values (see FR Y–9C, Schedule HC–F, item 4). To mirror the instructions used in the international G–SIB methodology, the Federal Reserve also proposes to update the definitions for net positive current exposure of SFTs with unaffiliated financial institutions (item 4) and net negative current exposure of SFTs with unaffiliated financial institutions (item 10).

IFSA includes the unused portion of committed lines extended to other financial institutions (item 2). The indicator does not, however, include financial and performance standby letters of credit, which may represent an important source of intra-financial connectivity. To capture this value without affecting the IFSA calculation, the Federal Reserve proposes to collect standby letters of credit extended to other financial institutions as a memorandum item (item M1).

Schedule C—Substitutability Indicators

Starting with the end-2015 assessment, the international G–SIB methodology will no longer use a fixed set of exchange rates in converting the payments totals to the reporting currency.[7] In accordance with this change, the Federal Reserve proposes allowing FR Y–15 respondents to construct their own exchange rates using a consistent series of exchange rate quotations. This is the method already employed for payments data involving currencies that are outside the scope of the international assessment.

Furthermore, the Basel Committee on Banking Supervision (BCBS) has identified three additional currencies that may be important in measuring the overall substitutability of a firm: Mexican pesos, New Zealand dollars, and Russian rubles. The Federal Reserve proposes capturing payments made in these currencies over the last four quarters as memoranda items. For readability, the Federal Reserve also recommends moving all currencies not listed above (from item 1(m) to item M4) and unsecured settlement/clearing lines

[1] See *2014 update of list of global systemically important banks (G–SIBs),* available at *www.financialstabilityboard.org/wp-content/uploads/r_141106b.pdf.*

[2] 12 U.S.C. 5365.

[3] See 79 FR 57725 (September 26, 2014).

[4] See 79 FR 57726 (September 26, 2014).

[5] See Appendix 6 of the *Instructions for the end-2014 G–SIB assessment exercise,* January 2015, available at *www.bis.org/bcbs/gsib/instr_end14_gsib.pdf.*

[6] *Ibid.*

[7] *Ibid.*

provided (from Schedule F, item 11 to item M5).

Schedule D—Complexity Indicators

Two of the items in Schedule D rely on the definitions for level 1 and level 2 liquid assets. In finalizing the previous revisions to the FR Y–15, the Federal Reserve stated that, ''after the U.S. rule implementing the LCR is finalized, the Federal Reserve will consider aligning the definitions of level 1 and level 2 assets used in the two items of the FR Y–15 with the definitions in the U.S. rule.'' [8] Now that the rule implementing the liquidity coverage ratio (LCR) has been finalized, the Federal Reserve proposes adopting the level 1, level 2A, and level 2B liquid asset definitions used in the U.S. rule for the purpose of reporting trading and available-for-sale (AFS) securities that meet the definition of level 1 assets (item 7) and trading and AFS securities that meet the definition of level 2 assets with haircuts (item 8).[9] While this revision aligns level 1 and level 2 liquid assets with the definition of high-quality liquid assets in the U.S. LCR rule, this could, in turn, result in a more stringent measure of the trading and AFS securities indicator relative to the international standard.

To enhance readability, the Federal Reserve also proposes to change held-to-maturity securities (item M1) to a memoranda item.

Schedule E—Cross-Jurisdictional Activity Indicators

The Federal Reserve proposes no changes to this schedule.

Schedule F—Ancillary Indicators

The Federal Reserve proposes adopting a more logical ordering of the revenue-related items (items 3, 4, and 5). As peak equity market capitalization (item 6) is no longer being captured in the international collection, the Federal Reserve proposes removing the item from the FR Y–15. To help prevent potential misinterpretations, the Federal Reserve proposes to revise the instructions for the gross value of cash provided and gross fair value of securities provided in SFTs (renumbered item 6) and the gross value of cash received and gross fair value of securities received in SFTs (renumbered item 7). The Federal Reserve proposes to move unsecured settlement/clearing lines provided (item 11) and held-to-maturity securities (item 12) to other schedules.

Schedule G—Short-Term Wholesale Funding Indicator

As explained in a recent notice of proposed rulemaking regarding implementation of a capital requirement for G–SIBs,[10] the financial crisis revealed dangers that can emerge as a result of a firm's reliance on short-term wholesale funding. During periods of stress, this reliance can leave firms vulnerable to runs that undermine financial stability. When short-term creditors lose confidence in a firm or believe other short-term creditors may lose confidence in that firm, those creditors have a strong incentive to withdraw funding quickly before withdrawals by other creditors drain the firm of its liquid assets. To meet its obligations, the borrowing firm may be required to rapidly sell less liquid assets, which it may be able to do only at fire sale prices that deplete the seller's capital and drive down asset prices across the market. In a post-default scenario, fire sale externalities could result if the defaulted firm's creditors seize and rapidly liquidate assets the defaulted firm has posted as collateral. Financial distress can spread among firms as a result of counterparty relationships or because of perceived similarities among firms, forcing firms to rapidly liquidate assets in a manner that places the financial system as a whole under significant strain.

Consistent with the view that short-term wholesale funding is a critical component of a firm's systemic footprint, the Federal Reserve proposes adding a new schedule (Schedule G) that captures a firm's level of short-term wholesale funding. The new schedule would be reported starting with the end-June 2016 as-of date [11] and would capture funding secured by level 1 liquid assets (item 1(a)), funding secured by level 2A liquid assets (item 2(a)), unsecured wholesale funding obtained outside of the financial sector (item 2(b)), retail brokered deposits and sweeps (item 2(c)), covered asset exchanges from level 1 to level 2A liquid assets (item 2(d)), short positions involving a level 1 or level 2A liquid asset (item 2(e)), total second tier short-term wholesale funding (item 2(f)), funding secured by level 2B liquid assets (item 3(a)), other covered asset exchanges and short positions (item 3(b)), total third tier short-term wholesale funding (item 3(c)), unsecured wholesale funding obtained within the financial sector (item 4(a)), all other components of short-term wholesale funding (item 4(b)), total other short-term wholesale funding (item 4(c)), and total short-term wholesale funding, by maturity, after applying the associated weighting (item 5). Each of these items would be divided into four maturity buckets: Funding with a remaining maturity of 30 days or less (along with funding with no maturity date), funding with a remaining maturity of 31 to 90 days, funding with a remaining maturity of 91 to 180 days, and, funding with a remaining maturity of 181 to 365 days. Finally, the new schedule would also capture total short-term wholesale funding (item 6) calculated as the sum of the subcomponents in item 5.

The recent proposal to implement a capital requirement for G–SIBs included short-term wholesale funding as a systemic risk indicator for the purposes of calculating a firm's G–SIB surcharge.[12] The Federal Reserve is currently in the process of reviewing public comments that have been received regarding this proposal. Should a short-term wholesale funding metric ultimately be adopted for the purposes of calculating a G–SIB surcharge, the Federal Reserve intends to update the FR Y–15, where needed, to reflect the final rule.

Changes to the Reporting Panel

While the original FR Y–15 proposal included SLHCs as respondents, the Federal Reserve decided to provide an exemption and ''publish a separate proposal for comment . . . after the regulatory capital rules for SLHCs are finalized.'' [13] Now that these capital requirements are in place, the Federal Reserve proposes to add covered SLHCs (*i.e.,* those which are not substantially engaged in insurance or commercial activities) to the FR Y–15 reporting panel.

Reporting Frequency

To improve the Federal Reserve's ability to monitor the systemic risk profile of domestic banking organizations throughout the year, the Federal Reserve proposes to switch from annual to quarterly reporting starting March 31, 2016. Currently, the Federal Reserve assesses the overall systemic importance of a firm using a single yearly observation. This snapshot may not adequately represent the true systemic footprint of the firm throughout the year. Moreover, should a firm's systemic footprint change

[8] See 78 FR 77130 (December 20, 2013).

[9] See 79 FR 61440 (October, 10, 2014).

[10] See 79 FR 75477 (December 18, 2014).

[11] The effective date for banking organizations to report Schedule G may be delayed pending the implementation of the requirement for such organizations to report data on the FR 2052a.

[12] See 79 FR 75477 (December 18, 2014).

[13] See 77 FR 76485 (December 28, 2012).

significantly during the year (*e.g.,* due to a fundamental change in business strategy), this move would not be fully assessed until the next year-end. More frequent reporting would allow the Federal Reserve to better monitor the systemic footprint of individual firms as well as the collective systemic footprint of the largest banking organizations.

The increased frequency would simultaneously provide the market with additional data on the overall systemic footprint of an institution, allowing market participants to better project the potential future capital requirements for U.S. G–SIBs. The current international G–SIB standard involves a relative methodology, where the values of all of the firms are needed in order to calculate the scores. Thus, firms only have complete information about their surcharge once a year. This makes it difficult for firms to see the benefits of incremental improvements in their overall footprint throughout the year. By collecting the required data more frequently, firms would have additional information about their own systemic footprint vis-à-vis other respondents, and would be better positioned to predict individual assessment scores under the BCBS methodology.[14]

One consequence of moving to quarterly reporting is that the annual flow variables (*i.e.,* payments and underwriting activity) would need to be reported over the previous four quarters. Furthermore, the values captured in Schedule A (Total exposures) would represent quarterly averages.

Glossary of Terms

Many items are unique to the FR Y–15 (*e.g.,* payments and assets under custody). As such, there are certain terms that may have a different meaning in the context of the FR Y–15 or otherwise may not be found in other regulatory reports. To help ensure uniform interpretation of the instructions, the Federal Reserve proposes to introduce a new glossary of terms that would contain definitions relevant to the completion of the FR Y–15 report.

Memoranda Items

To improve the readability of the report, the Federal Reserve proposes relabeling certain items which are not included in the indicator calculations as memoranda items. This would allow related metrics to be grouped together on the same schedule.

Instructional Clarifications

The Federal Reserve proposes to incorporate instructional clarifications in response to feedback and questions received from banking organizations over the last two reporting periods. The Federal Reserve also proposes to integrate relevant definitional adjustments and clarifications that have been incorporated into the instructions for the international G–SIB assessment.[15]

Board of Governors of the Federal Reserve System, July 6, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–16794 Filed 7–8–15; 8:45 am]

BILLING CODE 6210–01–P

[14] See *Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement,* July 2013, available at *www.bis.org/publ/bcbs255.htm.*

[15] See *Instructions for the end-2014 G–SIB assessment exercise,* January 2015, available at *www.bis.org/bcbs/gsib/instr_end14_gsib.pdf.*

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 2015.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Cape Bancorp, Inc.,* Cape May Court House, New Jersey; to become a bank holding company in connection with the reorganization of Cape Bank, Cape May Court House, New Jersey, converting from a state chartered mutual savings bank into a state chartered stock savings bank.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Olney Bancshares of Texas, Inc.,* Olney, Texas; to acquire 100 percent of the voting shares of Throckmorton Bancshares, Inc., and thereby indirectly acquire voting shares of The First National Bank of Throckmorton, both in Throckmorton, Texas.

Board of Governors of the Federal Reserve System, July 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–16792 Filed 7–8–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Larry W. Nelson, Lake Mary, Florida, as Personal Representative of the Jeno F. Paulucci Estate,* Sanford, Florida; to retain voting shares of Republic Bancshares, Inc., and thereby indirectly retain voting shares of Republic Bank, Inc., both in Duluth, Minnesota.

Board of Governors of the Federal Reserve System, July 6, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–16793 Filed 7–8–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting Requirements for the Older American Act Title VI Grant Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by August 10, 2015.

ADDRESSES: Submit electronic comments on the collection of information by fax to (202) 395–5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Cecelia Aldridge at (202) 357–3422 or *Cynthia.LaCounte@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

AoA estimates the burden of this collection of information as follows: Annual submission of the Program Performance Reports are due 90 days after the end of the budget period and final project period. The current form and instructions are posted on the AoA Web site at *http://www.aoa.gov/AoARoot/Grants/Reporting_Requirements*\insex.aspx.

Respondents: Federally Recognized Tribes, Tribal and Native Hawaiian Organizations receiving grants under Title VI, Part A, Grants for Native Americans; Title VI, Part B, Native Hawaiian Program and Title VI, Part C, Native American Caregiver Support Program. *Estimated Number of Responses:* 266. *Total Estimated Burden Hours:* 731.5.

Dated: July 2, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–16755 Filed 7–8–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15MZ]

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 the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Project Title—Digital Media and Tobacco Outcomes Survey—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests a one-year OMB approval to conduct a web-based survey of smokers in the United States. This survey will be fielded for purposes of providing CDC with new, timely, and relevant information regarding the efficacy of the digital advertising component of the 2015 National Tobacco Prevention and Control Public Education Campaign (The Campaign). Specifically, CDC will evaluate associations between confirmed exposures to The Campaign's digital and social media advertising and self-reported knowledge, attitudes, beliefs about tobacco use, and smoking-related information-seeking behavior.

This information collection will consist of an online survey of demographically similar comparison groups of Internet users who were exposed or not exposed to campaign advertising through digital and social media during the planned March–July 2015 campaign. Information will be collected about smokers' exposure to campaign digital advertisements and self-reported knowledge, attitudes, and beliefs related to smoking, and smoking-related information seeking. The survey will also measure behaviors related to smoking cessation and intentions to quit smoking. These data will be used to examine the statistical relationships between exposure to the digital campaign and changes in outcome variables of interest. This information collection fills current gaps in CDC's available data for evaluating the digital advertising components of The Campaign which, to date, have been limited to measures of ad reach and do not address digital campaign impacts on smoking-related knowledge, attitudes, and beliefs, intentions, and behaviors related to smoking cessation.

Data will be collected using the comScore Internet panel, a market research company that unobtrusively collects web behavior data on 1+ million U.S. Internet users to measure patterns in consumer behaviors online. As part of their participation, comScore panelists have previously agreed to download software on their computers that enables comScore to passively track their web behavior, including Web sites visited, searches they conduct, purchases they make, and ads that are delivered on sites visited, regardless of whether the ads are clicked or not. These data are then aggregated and weighted to provide estimates of consumer behaviors online. The panel is a convenience sample with panelists largely recruited via nonprobability-based sampling methods (*e.g.,* online ads, partner Web sites). However, a subsample is recruited via random-digit-dialing to calibrate post-stratification weights that comScore uses to generate weighted demographic distributions that are similar to the U.S. Internet population. While our proposed analyses will also utilize such weights, all results will be interpreted in light of the sample source and direct claims of national representation will not be made.

Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 4,134.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Population of Internet Users	Screening and Consent Questionnaire	50,000	1	2/60
Eligible participants, ages 18 and older in the U.S.	Digital Media and Tobacco Outcomes Questionnaire (Wave 1).	5,000	1	20/60
	Digital Media and Tobacco Outcomes Questionnaire (Wave 2).	2,400	1	20/60
				Total

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–16772 Filed 7–8–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0313]

Meetings With the Office of Orphan Products Development; Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry, researchers, patient groups, and FDA staff entitled ''Meetings with the Office of Orphan Products Development.'' This guidance provides recommendations to industry, researchers, patient groups, and other stakeholders (collectively referred to as ''stakeholders'') interested in requesting a meeting with FDA's Office of Orphan Products Development (OOPD) on issues related to orphan drug designation requests, humanitarian use device (HUD) designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. This guidance document is intended to assist these groups with requesting, preparing, scheduling, conducting, and documenting meetings with OOPD. This guidance finalizes the draft guidance of the same title dated April 2014.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Orphan Products Development (OOPD), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5295, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling OOPD at 301–796–8660. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James D. Bona, Office of Orphan Products Development (OOPD), Food and Drug Administration, Bldg. 32, Rm. 5204, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8673, email: *james.bona@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry, researchers, patient groups, and FDA staff entitled ''Meetings with the Office of Orphan Products Development.'' Each year, OOPD staff participates in meetings with stakeholders who seek guidance or clarification relating to orphan drug or HUD designation requests, OOPD grant programs, or other rare disease issues. These meetings can be ''informal'' or ''formal'' and help build a common understanding on FDA's thoughts on orphan products, which may include drugs, biological products, devices, or medical foods for a rare disease or condition. These meetings may represent critical points in the orphan product development process and may even have an impact on the eventual availability of products for patients with rare diseases and conditions. It is important that these meetings be scheduled within a reasonable time, conducted effectively, and documented where appropriate. This guidance is intended to provide consistent procedures to promote well-managed meetings between OOPD and stakeholders.

Topics addressed in this guidance include: (1) Clarification of what constitutes an ''informal'' or ''formal'' meeting, (2) program areas within OOPD that may be affected by this draft guidance, (3) procedures for requesting and scheduling meetings with OOPD, (4) description of what constitutes a meeting package, and (5) procedures for the conduct and documentation of meetings with OOPD.

In the **Federal Register** of April 9, 2014 (79 FR 19623), FDA issued, for public comment, ''Draft Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff on Meetings with the Office of Orphan Products Development.'' The Agency issued this draft guidance to assist stakeholders with requesting, preparing, scheduling, conducting, and documenting meetings with OOPD. In particular, the draft guidance provided clarification on what constitutes an ''informal'' or ''formal'' meeting, program areas within OOPD that may be affected by the guidance, procedures for requesting and scheduling meetings with OOPD, description of what constitutes a meeting package, and procedures for the conduct and documentation of meetings.

We received several comments on the draft guidance. Most comments appreciated the clarification and explanation provided by the draft guidance. Some comments made recommendations to improve clarity.

FDA is issuing the draft guidance in final form with minor revisions to improve clarity. This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the

Agency's current thinking on meetings with OOPD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control numbers 0910–0167, 0910–0332, and 0910–0787.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or at *http://www.regulations.gov.*

Dated: July 2, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–16773 Filed 7–8–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2100]

Patricia Durr: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The U.S. Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Patricia Durr from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Durr was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Ms. Durr was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Ms. Durr failed to request a hearing. Ms. Durr's failure to request a hearing constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective July 9, 2015.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Enforcement, Office of Enforcement and Import Operations, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr. (ELEM–4144), Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On April 2, 2014, the U.S. District Court for the Eastern District of Virginia entered judgment against Ms. Durr for one count of introducing misbranded drugs into interstate commerce with intent to defraud or mislead, in violation of sections 301(a) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(a) and 333(a)(2)).

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: Ms. Durr was a sales representative for Gallant Pharma International Inc. (Gallant Pharma) between October 2010 and August 2013, and was responsible for selling injectable cosmetic drugs and devices, and intravenous chemotherapy drugs, to doctors and hospitals in Massachusetts and Connecticut. Some of the drugs Ms. Durr facilitated the sale of were misbranded within the meaning of the FD&C Act.

Ms. Durr admitted that she sold drugs which were not approved by the FDA for use on patients in the United States. She further admitted that the drugs she sold on behalf of Gallant Pharma were misbranded in that they did not bear adequate directions for use and were not subject to an exemption from that requirement, and they were accompanied by non-FDA approved packaging and inserts.

Between August 2012 and August 2013, Ms. Durr admitted to selling more than $699,000 in misbranded drugs and devices to doctors and medical practices in Massachusetts and Connecticut. She further admitted that the loss amount attributable to her personal sales, under U.S. Sentencing Guidelines, was between $400,000 and $1,000,000.

Between October 2010 and August 2013, Ms. Durr personally sold misbranded drugs to 33 distinct doctors and medical practices, and generated more than $2.6 million in illegal proceeds from these sales. She admitted that, as of August 2012, she became willfully blind to the illegality of Gallant Pharma's business. Nonetheless, she continued her sales activity with Gallant Pharma until her arrest in August 2013.

As a result of her conviction, on March 9, 2015, FDA sent Ms. Durr a notice by certified mail proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on the finding, under section 306(a)(2)(B) of the FD&C Act, that Ms. Durr was convicted of a felony under Federal law for conduct related to the regulation of a drug product. FDA determined that Ms. Durr's felony conviction was related to the regulation of drug products because the conduct underlying her conviction undermined FDA's regulatory oversight over drug products marketed in the United States by intentionally introducing into interstate commerce drug products that did not bear adequate directions for use and were not subject to an exemption from that requirement, and which, among other things, were accompanied by non-FDA approved packaging and inserts. The proposal also offered Ms. Durr an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on March 24, 2015. Ms. Durr failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and has waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement and Import Operations, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Patricia Durr has been convicted of a felony under federal law for conduct relating to the regulation of a drug product. Section 306(c)(2)(A)(ii) of the FD&C Act (21 U.S.C. 335a(c)(2)(A)(ii)) requires that Ms. Durr's debarment be permanent.

As a result of the foregoing findings, Patricia Durr is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see DATES) (see section 201(dd), 306(c)(1)(B), and 306(c)(2)(A)(ii) of the FD&C Act (21 U.S.C. 321(dd), 335a(c)(1)(B), and 335a(c)(2)(A)(ii)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Patricia Durr, in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Durr provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7))). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Patricia Durr during her period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A))).

Any application by Ms. Durr for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2014–N–2100 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 2015.

Douglas Stearn,

Director, Division of Compliance Policy, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2015–16665 Filed 7–8–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2167]

Heparin-Containing Medical Devices and Combination Products: Recommendations for Labeling and Safety Testing; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Heparin-Containing Medical Devices and Combination Products: Recommendations for Labeling and Safety Testing.'' This draft guidance describes FDA's intent to address the safety concerns by clarifying new expectations for labeling with regard to the soon-to-be revised heparin United States Pharmacopeia (USP) monographs as well as outline safety testing recommendations. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 7, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies of the draft guidance document entitled ''Heparin-Containing Medical Devices and Combination Products: Recommendations for Labeling and Safety Testing'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993–0002, 301–796–6380.

SUPPLEMENTARY INFORMATION:

I. Background

The USP [1] heparin monographs have recently undergone several revisions following serious and fatal events related to the use of heparin sodium products. Investigation of heparin product overdose errors identified the expression of drug strength in the labels as a major contributing factor in these errors. This draft guidance document is intended to address these safety concerns by clarifying new expectations for labeling with regard to the soon-to-be revised heparin USP monographs (USP36–NF31),[2] as well as outline safety testing recommendations.

In addition, the outbreak of serious and often fatal events due to heparin contamination with over-sulfated chondroitin sulfate in 2008 led the USP to include in its monograph additional testing of heparin source material to ensure its quality and purity. This draft guidance also outlines use of conformance to the monograph in premarket submissions, specifically testing and documentation requirements and recommendations contained in the current USP monograph, and the guidance document ''Heparin for Drug and Medical Device Use: Monitoring Crude Heparin for Quality'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatory*

[1] USP is a scientific nonprofit organization that develops standards for the identity, strength, quality, and purity of drugs and drug ingredients marketed in the United States. These standards are published in USP's official compendia, ''United States Pharmacopeia and National Formulary.''

[2] USP monograph, USP PF 38 (3) and (5) Interim Revision Announcement, with proposed effective revision date of May 1, 2013. See also ''FDA Drug Safety Communication: Important Change to Heparin Container Labels to Clearly State the Total Drug Strength'' at *http://www.fda.gov/Drugs/DrugSafety/ucm330695.htm.*

Information/Guidances/UCM291390.pdf).[3]

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on labeling and safety testing requirements for heparin-containing medical devices and combination products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Device and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Heparin-Containing Medical Devices and Combination Products: Recommendations for Labeling and Safety Testing'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1817 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 211 (Current Good Manufacturing Practice for Finished Pharmaceuticals) have been approved under OMB control number 0910–0139. The collections of information in FDA's medical devices regulations in 21 CFR parts 801 (Labeling); 803 (Medical Device Reporting); 807, subpart E (Premarket Notification Procedures); 812 (Investigational Device Exemptions); 814, subparts A through E (Premarket Approval of Medical Devices); 814, subpart H (Humanitarian Use Devices); and 820 (Quality System Regulation) have been approved under OMB control numbers 0910–0485, 0910–0437, 0910–0120, 0910–0078, 0910–0231, 0910–0332, and 0910–0073 respectively.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 2, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–16775 Filed 7–8–15; 8:45 am]

BILLING CODE 4164–01–P

[3] The Agency updates guidances periodically. To make sure you have the most recent version of this guidance, check the CDER guidance page at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Acute Ischemic Stroke Medical Devices Trials Workshop; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Acute Ischemic Stroke Medical Device Trials Workshop''. Acute ischemic stroke medical devices are intended to remove blood clots from the cerebral neurovasculature by mechanical, laser, ultrasound, or a combination of technologies. The purpose of this workshop is to obtain public input and feedback on scientific, clinical, and regulatory considerations associated with acute ischemic stroke medical devices. Ideas generated during this workshop may facilitate further development of guidance regarding the content of premarket submissions for acute ischemic stroke emerging technologies and help to speed development and approval of future submissions.

DATES: The public workshop will be held on October 6, 2015, from 1 p.m. to 5:30 p.m. Registration to attend the meeting must be received by September 25, 2015, at 4 p.m. See the **SUPPLEMENTARY INFORMATION** section for instructions on how to register for the public workshop. Submit either electronic or written comments by November 3, 2015.

ADDRESSES: The public workshop will be held at the Bethesda Pooks Hill Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814. Please visit the following Web site for parking and security information: *http://www.marriott.com/hotels/maps/travel/wasbt-bethesda-marriott/.*

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Hilda Scharen, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 3625, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6815, *Hilda.Scharen@fda.hhs.gov;* or Jamie Waterhouse, Project Manager, Neurointerventional and Neurosurgical Devices Branch, Division of Neurological and Physical Medicine Devices, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3063, *Jamie.Waterhouse@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Acute ischemic stroke medical devices are intended to remove blood clots from the cerebral neurovasculature. This may be achieved through a variety of mechanisms, such as mechanical, laser, ultrasound, or a combination of technologies. Acute ischemic stroke medical devices can present both important safety and effectiveness questions as well as study design and data analysis challenges.

II. Purpose and Scope of the Public Workshop

The workshop seeks to involve industry and academia in addressing scientific, clinical, and regulatory considerations associated with acute ischemic stroke medical devices. By bringing together relevant stakeholders, which include scientists, patient advocates, clinicians, researchers, industry representatives, and regulators,

to this workshop, we hope to facilitate the improvement of this rapidly evolving product area.

This workshop is aimed to address scientific, clinical, and regulatory considerations associated with acute ischemic stroke medical devices, including but not limited to, the following topic areas:

- Considerations for clinical study trial designs, patient populations, and patient selection methods, and
- Considerations for clinical study endpoints, *e.g.,* clinically relevant outcome measures and related statistical analyses.

III. Attendance and Registration

Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by September 25, 2015, at 4 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 12 p.m.

If you need special accommodations due to a disability, please contact Susan Monahan, email: *susan.monahan@fda.hhs.gov* or phone: 301–796–5661 no later than September 25, 2015.

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 this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

IV. Comments

In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is November 3, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may also be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

Dated: July 2, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–16774 Filed 7–8–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than August 10, 2015.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 594–4306.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting (Home Visiting) Program, Competitive Funding Opportunity Announcement OMB No. 0915–0351—Extension.

Abstract: The Home Visiting Program, administered by the Health Resources and Services Administration (HRSA) in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. The 50 states, District of Columbia, and 5 territories and eligible nonprofit organizations are eligible for Home Visiting Competitive Funding.

Need and Proposed Use of the Information: The purpose of this announcement is to solicit Fiscal Year 2016 (FY16) applications for the Home Visiting Competitive Grant program. Competitive Grants provide funds to eligible entities that are states and certain territories that continue to make significant progress toward implementing a high-quality home visiting program as part of a comprehensive, high-quality early childhood system and are ready and able to take effective programs to scale to address unmet need. This information collection is needed for eligible entities to apply for competitive funding opportunities under the MIECHV. As noted above, this program is authorized under the Social Security Act, Title V, Section 511 (42 U.S.C. 701), as amended by Section 2951 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148). A portion of funding under this program is awarded to participating states and eligible jurisdictions [1] by formula.

[1] The 50 states, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Marianas, District of Columbia, and Guam.

However, an additional portion of funds is awarded competitively.

The information collected will be used to collect applicant information regarding proposed project plans sufficient to inform peer review and subsequent grant award and monitoring. Peer reviewers will be selected from among experts in the relevant fields to assess and score applicant proposals. On the basis of reviewer scores, applications will be ranked, and the highest scoring applications will be funded according to availability of funds. Applications approved for funding are entered into HRSA's Electronic Handbook (EHB).

Subsequent to award, the approved plans set forth in the applications in the EHB will be monitored by Federal Project Officers to ensure implementation according to these plans, as submitted in this data collection instrument. Failure to collect this information would result in either a failure to make awards to eligible entities as required by law, or would necessitate award of all funds by formula, which is inconsistent with established program policy and implementation, as competitive awards have been made a part of this program's administration.

Likely Respondents: Applicants to FY16 Home Visiting Competitive Funding Opportunity Announcement.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Summary of progress on the following activities	Number of respondents	Number of responses per respondent	Total responses	Hours per response	Total burden hours
Introduction	47	1	47	10	470
Needs Assessment	47	1	47	14	658
Methodology	47	1	47	15	705
Work Plan	47	1	47	15	705
Resolution of Challenges	47	1	47	14	658
Evaluation and Technical Support	47	1	47	48	2256
Organizational Information	47	1	47	10	470
Additional Attachments	47	1	47	13	611
Total	47	8	376	139	6533

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–16735 Filed 7–8–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2015–0019]

Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; notice of Federal Advisory Committee meeting.

SUMMARY: The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on July 29, 2015, in Rosemont, IL. The meeting will be open to the public.

DATES: The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on Wednesday, July 29, 2015, from 1:00 p.m. to 4:00 p.m. CDT. Please note that the meeting may close early if the committee has completed its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

—For members of the public who plan to attend the meeting in person, please register either online at *https://apps.cbp.gov/te_reg/index.asp?w=45;* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290 by 5:00 p.m. EDT on July 24, 2015. You must register prior to the meeting in order to attend the meeting in person.

—For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=45* by 5:00 p.m. EDT on July 24, 2015.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=45* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=45* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the Crown Plaza Chicago O'Hare, in the O'Hare Ballroom #1, 5440 North River Road, Rosemont, IL 60018. There will be signage posted directing visitors to the location of the O'Hare Ballroom #1.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than July 17, 2015, and must be identified by Docket No. USCBP–2015–0019, and may be submitted by *one* of the following methods:

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

• *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.

• *Fax:* (202) 325–4290.

• *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2015–0019. To submit a comment, see the link on the Regulations.gov Web site for ''How do I submit a comment?'' located on the right hand side of the main site page.

There will be multiple public comment periods held during the meeting on July 29, 2015. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac,* at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. Appendix. The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within Department of Homeland Security and the Department of the Treasury.

Agenda

The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed on those topics:

1. The One U.S. Government Subcommittee will discuss the Automated Commercial Environment (ACE), Single Window working group recommendations and provide input on Trade Readiness and Partner Government Agencies' readiness for the upcoming November 1, 2015 ACE implementation of Single Window.

2. The Exports Subcommittee will address policy and a strategic approach regarding exports. The Option 4 and Air Manifest working groups will provide recommendations.

3. The Trade Enforcement and Revenue Collection Subcommittee will discuss the establishment of the 14th Term Antidumping and Countervailing Duty and Intellectual Property Rights working groups and provide recommendations.

4. The Trade Modernization Subcommittee will discuss operational uniformity of Centers of Excellence and Expertise (CEE) with a goal of developing recommendations for the creation of service levels for various Center activities. The subcommittee will report plans for engaging CBP on international trade agreements, simplification of CBP processes, the role of various international trade entities and the development of private and public sector trade expertise.

5. The Trusted Trader Subcommittee will start work once the Trusted Trader pilot has advanced to the implementation phase for testing CBP and Partner Government Agency trade benefits. The subcommittee will explore certifying trusted products through the supply chain.

6. The Global Supply Chain Subcommittee will discuss the feasibility, benefits and risks of using Electronic Cargo Security Devices. The subcommittee will report on long term development of recommendations regarding Customs and Border Protection's development of automation and regulations governing the commodities being moved by pipelines. Further discussion will involve the Customs-Trade Partnership Against Terrorism Program as it pertains to the ocean mode of transportation, results of various pre-inspection pilots at land ports of entry and the Air Cargo Advance Screening.

Meeting materials will be available at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: July 2, 2015.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations.

[FR Doc. 2015–16814 Filed 7–8–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N127; FXES11120800000–156–FF08EVEN00]

Proposed Low-Effect Habitat Conservation Plan for the Endangered Smith's Blue Butterfly for Repair of Five Bridges, Point Sur State Historic Park, Monterey County, California

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) have received an application from the Monterey District of the California Department of Parks and Recreation (CDPR, applicant) for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) incidental to otherwise lawful activities associated with the repair and reconstruction of five existing timber bridges located along the access roads to the Point Sur Light Station and Lighthouse at the Point Sur State Historic Park (PSSHP).

The Service's proposed action is the issuance of a permit to the CDPR for a low-effect habitat conservation plan (HCP) for incidental take of Smith's blue butterfly. We are requesting comments on the applicant's permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated low-effect screening form, which are available for public review, along with the draft HCP.

DATES: Written comments should be received on or before August 10, 2015.

ADDRESSES: You may download a copy of the HCP, draft Environmental Action Statement, Low-Effect Screening Form, and related documents on the Internet at *http://www.fws.gov/ventura,* or you may request documents by U.S. mail or

phone (see below). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644–1766. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Lena Chang, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Smith's blue butterfly was listed as endangered by the Service on June 1, 1976. Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species.

However, take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an incidental take permit. Plant species may be included on a permit in recognition of the conservation benefits provided them under a habitat conservation plan. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)). In addition to meeting other criteria, actions undertaken through implementation of the HCP must not jeopardize the continued existence of federally listed plant or animal species.

The Point Sur Lighthouse and Light Station are located on the Big Sur Coast in Monterey County, California at the Point Sur State Historic Park (PSSHP), located approximately 135 miles south of San Francisco and 23 miles south of the City of Monterey via California State Highway 1. This lighthouse has been in continuous operation since 1889 and is accessible by a paved service road that leads to the top of Moro Rock at Point Sur and crosses five timber bridges in need of maintenance and repair. The PSSHP consists of four parcels managed by the CDPR. Collectively, these four parcels measure approximately 72 acres.

Surveys for both the larval and adult life stages of the Smith blue butterfly have been performed at PSSHP. Despite an intensive search effort, no life stages were observed; however, weather conditions may have hindered the surveys. Smith's blue butterfly life stages have been observed within dispersal distance of PSSHP and habitat at PSSHP is present; therefore, the Smith's blue butterfly is assumed present at the site.

The proposed HCP and associated incidental take permit would authorize take of the Smith's blue butterfly. This take would be incidental to the CDPR's proposed replacement and repair of the five bridges, installation of permanent erosion control mats, and storm drain improvements, as well as future routine maintenance activities for the access road and its associated ditches. It would also cover revegetation activities that would occur at the bridge repair sites and other locations adjacent to the service road as well as at the dunes mitigation site located east and northeast of the base of Moro Rock. Impacts to Smith's blue butterfly from project-related activities will be primarily limited to small work areas associated with repairs to the five bridges and erosion control measures. Additional impacts would occur due to storm water improvements and periodic routine road and ditch maintenance. The total area of impact on Smith's blue butterfly habitat would be approximately 10,196 square feet (0.2341 acre).

The CDPR proposes to implement general and specific conservation measures designed to avoid or minimize take of Smith's blue butterfly. To mitigate for unavoidable impacts, the CDPR proposes to restore 3.6 acres of northern foredunes at the dunes mitigation site near the base of Moro Rock. Management goals include removal and control of invasive vegetation, erosion control; restoration of the northern foredune habitat including revegetation of Smith's blue butterfly seacliff buckwheat (*Eriogonum parvifolium*) habitat at a 3:1 ratio; and revegetation of other dune plants endemic to the dunes at PSSHP.

Two alternatives to the proposed action are considered in the HCP. Under the No Action Alternative, the proposed project would not occur and an incidental take permit would not be issued by the Service. Two of the access bridges to the Point Sur Lighthouse would remain closed to all vehicular traffic. The conditions of the remaining bridges would continue to deteriorate, and existing erosion and storm water issues would not be corrected. Conservation measures described in the HCP would not be implemented and the restoration of the 3.6-acre dune mitigation site would not occur; therefore, the No Action Alternative is considered to have less conservation value to the covered species than the proposed project and accompanying HCP. Under the Redesigned Project Alternative, the areas of impact would be reduced at the five impact areas located along the access roads, which would likely result in reduced take of Smith's blue butterfly; however, smaller work areas would not allow the CDPR to properly repair the five timber bridges and correct the erosion and storm water issues.

We are requesting comments on our preliminary determination that the CDPR's proposed project will have minor or negligible effects on the Smith's blue butterfly and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (Service 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an incidental take permit qualify for categorical exclusions under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) permit would

comply with section 7 of the Act by conducting intra-Service section 7 consultation for the plan. We will use the result of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the permit. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Smith's blue butterfly. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Review

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicant's proposal will have a minor or negligible effect on the Smith's blue butterfly and that the plan qualifies as a ''low-effect'' HCP as defined by our 1996 Habitat Conservation Planning Handbook.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 2, 2015.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2015–16765 Filed 7–8–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2015–N049; BAC–4311–K9]

James River National Wildlife Refuge, Prince George County, VA; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for James River National Wildlife Refuge (NWR), located in Prince George County, Virginia. The CCP will guide refuge management for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy or a CD–ROM.

Agency Web site: Download a copy of the document at *http://www.fws.gov/refuge/James_River/what_we_do/conservation.html.*

Email: Send requests to *EasternVirginiaRiversNWRC@fws.gov.* Please include ''James River CCP'' in the subject line of your email.

U.S. Mail: Andy Hofmann, Refuge Manager, U.S. Fish and Wildlife Service, P.O. Box 1030, Warsaw, VA 22572.

Fax: Attention: Andy Hofmann, 804–333–3396.

In-Person Viewing or Pickup: Call Andy Hofmann, Refuge Manager, at 804–333–1470, extension 112, during regular business hours. For more information on locations for viewing documents, see ''Public Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andy Hofmann, Refuge Manager, at 804–333–1470, extension 112 (phone) or *EasternVirginiaRiversNWRC@fws.gov* (email) (please put ''James River NWR'' in the subject line).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for James River NWR. We started this process through a notice in the **Federal Register** on January 11, 2012 (77 FR 1716). We released a draft CCP and environmental assessment (EA) to the public and requested comments in a notice in the **Federal Register** on October 22, 2014 (79 FR 63161).

We have selected alternative B for implementation, as it is described in the final CCP for James River NWR. We announce our decision and the availability of the FONSI for the final CCP in accordance with National Environmental Policy Act (40 CFR 1506.6(b)) requirements. We completed an analysis of impacts on the human environment in the draft CCP and EA. We made minor changes and clarifications to the final CCP, where appropriate, to address public comments we received on the draft CCP and EA. A summary of the public comments, and our responses to them, is included as Appendix F in the final CCP.

The 4,324-acre James River NWR lies in the Chesapeake Bay watershed and is located along the James River in Prince George County, Virginia, approximately 8 miles southeast of the city of Hopewell, and 30 miles southeast of Richmond. The refuge was established in 1991 under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1534) to protect nationally significant nesting and roosting habitat for the bald eagle (*Haliaeetus leucocephalus*).

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Selected Alternative

Alternative B combines the actions we believe would best achieve the refuge's purposes, vision, and goals, and respond to public issues. The basis of our decision is detailed in the FONSI (Appendix G in the final CCP). Under alternative B, we would emphasize the

management of specific refuge habitats to support priority species whose habitat needs would benefit other species of conservation concern that are found in the area. We would promote the transition of 2,651 acres of former pine plantation toward mature pine savanna for resident and breeding cavity-dwelling and ground-nesting species, including the brown-headed nuthatch, Chuck-will's-widow, red-headed woodpecker, and yellow-billed cuckoo. We would also emphasize protecting and promoting bald eagle nesting habitat, and protecting the integrity of the refuge's other habitats for native species, including migrating waterfowl, waterbirds, the federally endangered Atlantic sturgeon, and federally threatened sensitive joint-vetch. We would also expand our conservation, research, monitoring, and management partnerships to help restore and conserve the refuge.

We would enhance our cultural resource protection to increase knowledge and appreciation for the refuge's rich cultural history and heritage, as well as expand our visitor services programs to improve opportunities for wildlife-dependent recreation. Visitor service improvements would include expanding the on-refuge opportunities for wildlife observation, photography, environmental education, and interpretation of natural and cultural resources in partnership with others. We would also pursue Service administrative requirements to expand public deer hunting, open the refuge to spring and fall turkey hunting, open the refuge to limited waterfowl hunting by youth, promote youth involvement in all hunting opportunities, and open the refuge to fishing at two designated locations. Further details on our selected alternative and management actions can be found in the CCP.

Public Availability of Documents

In addition to sources listed under **ADDRESSES**, you can view the final CCP at the Prince George Library, 6605 Courts Drive, Prince George, VA 23875.

Dated: June 11, 2015.

Deborah Rocque,

Acting Regional Director, Northeast Region.

[FR Doc. 2015–16764 Filed 7–08–15; 8:45 a.m.]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L14400000–BJ0000–15XL1109AF: HAG 15–0181]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 27 S., R. 12 W., accepted June 3, 2015
T. 34 S., R. 7 W., accepted June 16, 2015
T. 33 S., R. 7 W., accepted June 18, 2015
T. 35 S., R. 2 E., accepted June 18, 2015

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2015–16767 Filed 7–8–15; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 16, 2015 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–534–538 and 731–TA–1274–1278. (Preliminary) (Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan). The Commission is currently scheduled to complete and file its determinations on July 20, 2015; views of the Commission are currently scheduled to be completed and filed on July 27, 2015.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 7, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–16909 Filed 7–7–15; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–019]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 14, 2015 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–522 and 731–TA–1258 (Final) (Certain Passenger Vehicle and Light Truck Tires from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on July 27, 2015.
5. Vote in Inv. No. 731–TA–1059 (Second Review) (Hand Trucks from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on July 30, 2015.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 6, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–16908 Filed 7–7–15; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On July 2, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the Western District of Pennsylvania in a lawsuit entitled *United States* v. *the Estate of Richard B. Herzog, Deceased, through Tim E. Herzog and Wesleah D. Blair as Co-executors of the Estate of Richard B. Herzog, Deceased,* Civil Action No. 1:15–cv–162.

The proposed Consent Decree will resolve claims alleged under the Oil Pollution Act by the United States against the Estate of Richard B. Herzog through Tim E. Herzog and Wesleah D. Blair, as Co-executors of the Estate of Richard B. Herzog, for recovery of removal costs relating to discharges and substantial threat of discharges of oil from an abandoned oil production facility located within approximately 750 acres of land in Foster Township, McKean County, Pennsylvania which is colloquially known as the Johnston Farm leasehold (the ''Facility''). Under the proposed Consent Decree, the Defendants will pay a total of $954,400 to the United States. The proposed Consent Decree is based on Defendants' limited ability to pay, as determined by a qualified financial analyst.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *the Estate of Richard B. Herzog, Deceased, through Tim E. Herzog and Wesleah D. Blair, as Co-executors of the Estate of Richard B. Herzog, Deceased,* D.J. Reference No. 90–5–1–1–09646. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $29.5 (25 cents per page reproduction costs) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $9.00.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2015–16787 Filed 7–8–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations, 30 CFR part 44, govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before August 10, 2015.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 4th floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a

diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–002–M.

Petitioner: Solvay Chemicals, Inc., P.O. Box 1167, 400 County Road 85, Green River, Wyoming 82935.

Mine: Solvay Chemicals, Inc., MSHA I.D. No. 48–01295, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.4760(a) (Shaft mines).

Modification Request: The petitioner requests a modification of the existing standard due to the potential negative impact that would adversely affect the safety of persons in the mine as a result of changes to the mine ventilation system. The petitioner states that:

1. The proposed modification would allow relief from providing at least one of the following means in the event of fire, smoke or toxic gases as stated in 30 CFR 57.4760(a):

(a) Solvay Chemicals, Inc. is categorized as a Category III mine in which non-combustible ore is extracted.

(b) The mine liberates a concentration of methane that is explosive, or is capable of forming explosive mixtures with air, or has the potential to do so, based on the history of the mine or the geological area in which the mine is located.

2. A Category III mine is subjected to 30 CFR 57.22214(a), which requires that any changes in ventilation which affect the main air current or any split thereof and which adversely affect the safety of persons in the mine must be made when the mine is idle.

3. The installation of control doors or the reversal of mechanical ventilation would affect the main air currents and splits thus adversely impacting the ventilation system's ability to render and dilute concentrations of toxic gases or methane gas. Additionally, the installation of control doors or the reversal of mechanical ventilation can only be achieved by shutting down the mines main exhaust fans. Due to the expanse of the mine, evacuation of all personnel underground to the surface in ten minutes or less is not an alternative means of compliance with the standard.

4. The best solution is to remove the miners in a safe manner prior to making any ventilation changes, that include closure or opening of control doors or mechanical ventilation reversal.

5. When a fire is detected the protocol within the Emergency Response Plan will be followed to include evacuating the mine in a safe and effective manner prior to making any ventilation changes.

6. The mine maintains two designated separate escapeways which provides miners with means of evacuating the mine; reducing the likelihood of miners having to travel through smoke or toxic gasses.

The petitioner asserts that compliance with the existing standard would result in a diminution of safety to the miners at the Solvay Chemicals Mine.

Docket Number: M–2015–003–M.

Petitioner: Tata Chemicals (Soda Ash) Partners, P.O. Box 551, Green River, Wyoming 82935.

Mine: Tata Chemicals Mine, MSHA I.D. No. 48–00155, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.4760(a) (Shaft mines).

Modification Request: The petitioner requests a modification of the existing standard because compliance with the 30 CFR 57.4760(a) via installation and use of control doors at mine intake shafts will likely result in a dangerous and impermissible change in underground ventilation, thereby diminishing the safety of miners working underground. Additionally, compliance with 30 CFR 57.4760(a) via installation and use of control doors would conflict with petitioner's ability to comply with another mandatory safety standard for Category III mines, 30 CFR 57.22214.

Petitioner is requesting relief from compliance with 30 CFR 57.4760(a) due to the potential diminution of safety to miners from the changes to the mine ventilation system that would likely result from installing and using control doors in the event of an underground fire. The petitioner states that:

1. On March 18 and 19, 2015, MSHA issued Citation Numbers 8830553, 8830554, and 8830555 at Tata Chemicals intake shafts #6, #2, and #3 alleging that Tata failed to provide control doors in compliance with 30 CFR 57.4760(a). 30 CFR 57.4760(a) provides three alternative methods that shaft mines must follow to control the spread of fire, smoke, and toxic gases underground in the event of a fire: (1) Installation of control doors, (2) reversal of mechanical ventilation, or (3) implementation of effective evacuation procedures. MSHA concedes in all three citations that reversal of the mine's mechanical ventilation system is not a feasible means of compliance with 30 CFR 57.4760(a), as fan reversal would push methane over nonpermissible equipment.

2. Although petitioner has an emergency evacuation plan, there is no feasible means of ensuring evacuation of miners working underground within ten minutes, as the regulation requires, due to the vast size of the petitioner's mine. Thus, MSHA concluded, that the petitioner must install control doors at its intake shafts in order to comply with 30 CFR 57.4760(a).

3. For the following reasons, petitioner disagrees with MSHA's conclusion, contends that there is no safe way of complying with the cited standard, and requests a variance from its application at the mine.

4. Petitioner conducted an independent analysis of the impacts that installation and use of a single or multiple intake air shaft ventilation control doors would have on the integrity of the mine's ventilation infrastructure and on the health and safety of miners working underground. The analysis concluded that:

(a) Using doors to isolate #2, #3, or #6 intake shafts constitutes a major air change. Changes of this magnitude will detrimentally influence the mine ventilation airflow balance. It would result in several likely scenarios that could quickly introduce return air and methane into the intake airways where numerous ignition sources exist.

(b) The fans are set to operate at the intersection of the fan and mine pressure-volume curves.

(c) A major air change modifies the mine curve and a new operating point of the fan is established.

(d) If the fans are not shut off before the air change, the operating point is likely to move toward or into this stall zone which will lead to damage and possible destruction of the fan and/or ventilation structures.

(e) The closure of control doors at intake shafts in the event of a fire would affect the main air currents and splits, thereby adversely impacting the ability of the ventilation system to dilute and render harmless concentrations of toxic gases or methane gas and in turn, endangering the health and safety of miners working underground.

5. The Tata mine is a Category III mine, a classification that applies to mines ''in which noncombustible ore is extracted and which liberate a concentration of methane that is explosive, or is capable of forming explosive mixtures with air, or have the potential to do so based on the history of the mine or the geological area in which the mine is located. The concentration of methane in such mines is explosive or is capable of forming explosive mixtures if mixed with air,'' 30 CFR 57.22003(a)(3). Tata must comply with the regulations applicable to Category III mines, including 30 CFR 57.22214(a), which mandates that

changes in ventilation which affect the main air current or any split thereof and which adversely affect the safety of persons in the mine will only be made when the mine is idle. Petitioner states that it is not possible to comply with both 30 CFR 57.4760(a) and 57.22214(a) at the Tata mine because the closure of one or more control doors in the event of a fire would certainly affect the main air currents and splits in such a way as to endanger the safety of persons working underground. Under 30 CFR 57.22214(a), such a ventilation change can only be carried out when the mine is idled with no miners underground. Compliance with 30 CFR 57.4760(a) via closure of a control door would not only endanger miners but would also be in violation of 30 CFR 57.22214(a).

6. 30 CFR 57.4760(a) does not take into account the complexities involved with suddenly restricting airflow in mines that have multiple shafts, multiple fan installations, and methane liberation. Petitioner noted that Part 75, which regulates underground coal mines, does not have any requirements that are equivalent to 30 CFR 57.4760 requirements for air control doors or alternative ventilation measures for the bottom, or near the bottom of coal mine intake shafts. The ventilation requirements applicable to Class III mines were specifically tailored to suit the conditions in a gassy trona mine like the Tata mine. Petitioner strongly contends that miners are already afforded adequate and equivalent protection via compliance with the fire prevention and control, and the ventilation requirements applicable to Class III mines. Mine rescue rules and basic ventilation flow principles dictate what changes in ventilation should be made in emergency situations, including a fire. Petitioner has a refuge and evacuation procedure set forth in the Mine's Emergency Response Plan. When a fire is detected underground, the mine's Emergency Response Plan is immediately implemented, and miners are trained on how to evacuate in a safe and swift manner depending on the location of the ignition. The mine maintains three designated separate escapeways which reduces the likelihood of miners having to travel through or past smoke or toxic gasses.

The petitioner asserts that compliance with the existing standard results in a diminution of safety to the miners at the Tata Mine.

Dated: July 2, 2015.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2015–16752 Filed 7–8–15; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; correction.

SUMMARY: On June 29, 2015, the Mine Safety and Health Administration (MSHA) announced in the **Federal Register** the availability of grant funds for education and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. 80 FR 37017. The document included an incorrect date.

FOR FURTHER INFORMATION CONTACT: Janice Oates at *Oates.Janice@dol.gov* or 202–693–9573 or Teresa Rivera at *Rivera.Teresa@dol.gov* or 202–693–9581.

Correction

In the **Federal Register** of June 29, 2015, 80 FR 37017, on page 37021, in the first column, correct the ''Submission Date, Times, and Addresses'' in paragraph D to read:

The closing date for applications will be August 29, 2015 (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2015.

Grant applications must be submitted electronically through the Grants.gov Web site. The Grants.gov site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA No. 17.603.

Dated: July 2, 2015.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. 2015–16739 Filed 7–8–15; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00027 and 052–00028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined Licenses (NPF–93 and NPF–94), 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 proposed amendment departs from Tier 2* and associated Tier 2 information in the VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) (which includes the plant specific Design Control Document Tier 2 information) to revise the application of welding codes. An individual **Federal Register** notice was published on June 8, 2015, providing an opportunity to comment, request a hearing, and petition for leave to intervene for a License Amendment Request (LAR) for the VCSNS combined licenses. The licensee has submitted a revision to the original LAR, dated May 26, 2015. This new revision increases the scope of the original LAR.

DATES: Submit comments by August 10, 2015. Requests for a hearing or petition for leave to intervene must be filed by August 10, 2015.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and

Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–0681; email: *Denise.Mcgovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441.
- *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.* The revised application for amendment, dated June 29, 2015, is available in ADAMS under Accession No. ML15181A079.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0441 in your comment submission.

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 posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–93 and NPF–94, issued to SCE&G and Santee Cooper for operation of the Virgil C. Summer Nuclear Station, Units 2 and 3, located in Fairfield County, South Carolina.

The proposed amendment would revise the plant-specific Design Control Document (DCD) Tier 2 and involved Tier 2* material incorporated into the Updated Final Safety Analysis Report (UFSAR), by revising the requirement to utilize American Welding Society (AWS) D1.1–1992, Structural Welding Code—Steel, when meeting the American Institute of Steel Construction (AISC) N690–1994 requirements. The changes involve the replacement of AWS D1.1–1992 with AWS D1.1–2000 and additional supplemental provisions consistent with provisions in AWS D1.1–2010 to provide criteria for AISC N690 activities related to the design, qualification, fabrication, and inspection of welds for nuclear island structures and the seismic Category II portions of the annex building and turbine building.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29. The design functions of the seismic Category II portions of the annex building and turbine building are to provide integrity for non-seismic items located in the proximity of safety-related items, the failure of which during a safe shutdown earthquake could result in loss of function of safety-related items.

The use of AWS D1.1–2000 and the supplemental provisions provide criteria for the design, qualification, fabrication, and inspection of welds for nuclear island structures and seismic Category II portions of the annex building and turbine building. These structures continue to meet the applicable portions of ACI 349, the remaining applicable portions of AISC N690 not related to requirements for welding, including the supplemental requirements described in UFSAR Subsections 3.8.4.4.1 and 3.8.4.5, and the supplemental requirements identified in the UFSAR Subsection 3.8.3 for structural modules. The use of AWS D1.1–2000 and the supplemental provisions does not have an adverse impact on the response of the nuclear island structures, or seismic Category II portions of the annex building and turbine building to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change includes the use of AWS D1.1–2000 and supplemental provisions to provide criteria for the design, qualification, fabrication, and inspection of welds for nuclear island structures and the seismic Category II portions of the annex building and turbine building. The proposed change provides a consistent set of requirements for welding of structures required to be designed to the requirements of ACI 349 and AISC N690. The change to the details does not change the design function, support, design, or operation of mechanical and fluid systems. The change to the welding criteria does not result in a new failure mechanism for the pertinent structures or new accident precursors. As a result, the design function of the structures

is not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The AWS codes are consensus standards written, revised, and approved by industry experts experienced in welding and weld design. The proposed change adds AWS D1.1–2000 to the list of applicable codes and standards in the UFSAR and adds supplemental provisions consistent with AWS D1.1–2010. The 2000 edition includes criteria that consider directionality in the weld, which allows for an increase factor on structural fillet weld strength relative to the angle of load direction. Supplemental provisions are added to the provisions in AWS D1.1–2000 for the application of directionality for linear fillet weld groups concentrically loaded in-plane to the axis of the weld that include elements oriented both longitudinally and transversely to the direction of applied load to address deformation of the welds. The change also specifies extension of the application of directionality provisions to linear and concentrically loaded rectangular and circular fillet weld groups loaded out-of-plane to the axis of the weld to supplement the conditions specified in AWS D1.1. These changes are supported by tests that provide the justification for criteria that consider the directionality. These changes can be similarly applied to welds in the AP1000 to continue to provide the necessary safety margin.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for hearing or a petition for leave to intervene specifying the contentions which the person seeks to have litigated in the hearing with respect to the license amendment request. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the NRC's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Hearing requests or petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local

residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated May 26, 2015.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Paul Kallan.

Dated at Rockville, Maryland, this 1st day of July 2015.

For the Nuclear Regulatory Commission.

Paul Kallan,

Acting Branch Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–16797 Filed 7–8–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0160]

NuScale Power, LLC, Design-Specific Review Standard and Safety Review Matrix; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Design-specific review standard; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on June 30, 2015, soliciting public comment on the Design-Specific Review Standard (DSRS) and Safety Review Matrix for the NuScale Power, LLC, design (NuScale DSRS Scope and Safety Review Matrix). This action is necessary to correct the table listing the NuScale-specific DSRS sections that the NRC is soliciting comment on because Section 14.3.8 was inadvertently omitted.

DATES: This correction is effective July 9, 2015. Submit comments by August 31, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2015–0160 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0160. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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.* The complete NuScale DSRS Scope and Safety Review Matrix is available in ADAMS under Accession No. ML15156B063.
- *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: Jenny Gallo, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7367; email: *NuScale-DSRS@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the FR on June 30, 2015, in FR Doc. 2015–16034, on page 37314, Section 14.3.8, ''Radiation Protection—Inspections, Tests, Analyses, and Acceptance Criteria,'' ADAMS Accession No. ML15127A385, is added to the table listing the NuScale-specific DSRS sections that the NRC is soliciting comment on.

Dated at Rockville, Maryland, this 2nd day of July 2015.

For the Nuclear Regulatory Commission.

Leslie S. Terry,

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

[FR Doc. 2015–16753 Filed 7–8–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG POWER SPVP, LLC., and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

The proposed amendment departs from Tier 2* and associated Tier 2 information in the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) (which includes the plant specific Design Control Document Tier 2 information) to revise the application of welding codes. An initial **Federal Register** notice was published on June 9, 2015, providing an opportunity to comment, request a hearing, and petition for leave to intervene for a License Amendment Request (LAR) for the VEGP combined licenses. The licensee has submitted a revision to the original LAR, dated May 26, 2015. This new revision increases the scope of the original LAR.

DATES: Submit comments by August 10, 2015. Requests for a hearing or petition for leave to intervene must be filed by September 8, 2015.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *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.* The application for amendment, dated June 29, 2015, is available in ADAMS under Accession No. ML15181A078.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

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 posts all comment submissions at *http://www.regulations.gov* as well as entering 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.

Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC., MEAG POWER SPVP, LLC., and the City of Dalton, Georgia for operation of the Vogtle Electric Generating Plant Units 3 and 4, located in Burke County, Georgia.

The proposed amendment departs from Tier 2* and associated Tier 2 information in the VEGP Units 3 and 4 UFSAR (which includes the plant specific Design Control Document Tier 2 information) to revise the application of American Institute for Steel Construction (AISC) N690–1994, Specification for the Design, Fabrication and Erection of Steel Safety Related Structures for Nuclear Facilities, to allow use of American Welding Society (AWS) D1.1–2000, Structural Welding Code—Steel, in lieu of the AWS D1.1–1992 edition identified in AISC N690–1994.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29. The design functions of the seismic Category II portions of the annex building and turbine building are to provide integrity for non-seismic items located in the proximity of safety-related items, the failure of which during a safe shutdown earthquake could result in loss of function of safety-related items.

The use of AWS D1.1–2000 and the supplemental provisions provide criteria for the design, qualification, fabrication, and inspection of welds for nuclear island structures and seismic Category II portions of the annex building and turbine building. These structures continue to meet the applicable portions of ACI 349, the remaining applicable portions of AISC N690 not related to requirements for welding, including the supplemental requirements described in UFSAR Subsections 3.8.4.4.1 and 3.8.4.5, and the supplemental requirements identified in the UFSAR Subsection 3.8.3 for structural modules. The use of AWS D1.1–2000 does not have an adverse impact on the response of the nuclear island structures, or seismic Category II portions of the annex building and turbine building to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change includes the use of AWS D1.1–2000 and supplemental provisions to provide criteria for the design, qualification, fabrication, and inspection of welds for nuclear island structures and the seismic Category II portions of the annex building and turbine building. The proposed change provides a consistent set of requirements for welding of structures required to be designed to the requirements of ACI 349 and AISC N690. The change to the details does not change the design function, support, design, or operation of mechanical and fluid systems. The change to the welding criteria does not result in a new failure mechanism for the pertinent structures or new accident precursors. As a result, the design function of the structures

is not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The AWS codes are consensus standards written, revised, and approved by industry experts experienced in welding and weld design. The proposed change adds AWS D1.1–2000 to the list of applicable codes and standards in the UFSAR and adds supplemental provisions consistent with AWS D1.1–2010. The 2000 edition includes criteria that consider directionality in the weld, which allows for an increase factor on structural fillet weld strength relative to the angle of load direction. Supplemental provisions are added to the provisions in AWS D1.1–2000 for the application of directionality for linear fillet weld groups concentrically loaded in-plane to the axis of the weld that include elements oriented both longitudinally and transversely to the direction of applied load to address deformation of the welds. The change also specifies extension of the application of directionality provisions to linear and concentrically loaded rectangular and circular fillet weld groups loaded out-of-plane to the axis of the weld to supplement the conditions specified in AWS D1.1. These changes are supported by tests that provide the justification for criteria that consider the directionality. These changes can be similarly applied to welds in the AP1000 to continue to provide the necessary safety margin.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for hearing or a petition for leave to intervene specifying the contentions which the person seeks to have litigated in the hearing with respect to the license amendment request. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the NRC's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Hearing requests or petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will

require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated May 26, 2015.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Paul Kallan.

Dated at Rockville, Maryland, this 1st day of July 2015.

For the Nuclear Regulatory Commission.

Paul Kallan,

Acting Branch Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–16796 Filed 7–8–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–22; Order No. 2562]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an Amendment to the existing Parcel Select & Parcel Return Service Contract 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 10, 2015.

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: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On June 26, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Parcel Select & Parcel Return Service Contract 3 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

On June 30, 2015, Chairman's Information Request No. 1 was issued.[2] The Postal Service responded to CHIR No. 1 on July 1, 2015, and filed the unredacted amendment under seal.[3] The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment describes the assignment and delegation rights under the contract and the package label indicia that will be valid in the event of the assignment, delegation, or transfer of the contract.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.*

II. Notice of Filings

The Commission invites 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 July 10, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Bzhilyanskaya to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2012–22 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than July 10, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–16759 Filed 7–8–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Parcel Select and Parcel Return Service Contract 3, with Portions Filed Under Seal, June 26, 2015 (Notice).

[2] Chairman's Information Request No. 1, June 30, 2015 (CHIR No. 1).

[3] Response of United States Postal Service to Chairman's Information Request No. 1, July 1, 2015.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75358; File No. SR–NYSEMKT–2015–45]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Discontinue Certain Fees

July 2, 2015.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 30, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') to discontinue certain fees. The Exchange proposes to implement the fee change effective July 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to discontinue certain fees as described below. The Exchange proposes to implement the fee change effective July 1, 2015.

The Exchange proposes to discontinue fees for certain Manual transactions in options overlying IWM (the iShares Russell 2000 ETF).[4] In April 2015, the Exchange implemented special pricing for IWM to encourage increased Manual trading in the product and to offset losses of Manual transactions associated with options in the iShares Russell Index (RUT), which is exclusively trading on another venue.[5] The Exchange does not believe that the special pricing in IWM has achieved its intended objective of attracting additional volume.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed fee change is reasonable and equitable because the discontinuance of the special pricing for Manual transactions in IWM will result in Manual transactions in all symbols being subject to the same pricing. The Exchange further believes the proposed rule change is equitably allocated and not unfairly discriminatory because it treats similarly situated market participants in the same manner.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–45, and should be submitted on or before July 30, 2015.

[4] The Commission notes that as described further below, the special pricing for Manual transactions in options overlying IWM is being discontinued, which will result in Manual transactions in all symbols being subject to the same pricing.

[5] *See* Exchange Act Release No. 74693 (April 9, 2015) 80 FR 20278 (April 15, 2015) (SR–NYSEMKT–2015–26). Specifically, the Exchange offered volume discounts for manual transactions in IWM to Broker-Dealers, Firms, NYSE Amex Options Market Makers, non-NYSE Amex Options Market Makers and Professional Customers. As is the case today, Customers are not charged for manual transactions in IWM.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16731 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75355; File No. SR–NSX–2015–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4.3, Record of Written Complaints

July 2, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2015, National Stock Exchange, Inc. (the ''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposed rule change as ''non-controversial'' pursuant to section 19(b)(3)(A) of the Act [3] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 4.3, Record of Written Complaints, to conform the requirements of the rule to those contained in the rules of other self-regulatory organizations (''SROs''). The Exchange is also proposing to amend Rule 4.3 to eliminate a requirement that complaints and actions with respect thereto be forwarded promptly to the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 4.3(a) requires that each Exchange Equity Trading Permit (''ETP'') Holder [5] keep and preserve a file of all written customer complaints [6] and action taken by the ETP Holder with respect to such complaints, for a period of not less than five years, the first two of which must be in a readily accessible place. The Exchange proposes to amend the rule to reduce the retention period for records of customer complaints and ETP Holder actions with respect thereto from five years to four years, the first two of which must be in a readily accessible place.

The Exchange's proposed rule change will align the retention period prescribed in Exchange Rule 4.3(a) with the retention periods for customer complaint information prescribed in the rules of other SROs. For example, FINRA Rule 4513 requires that FINRA members keep and preserve a record of customer complaints and any action taken by the FINRA member with respect to such complaints for a period of not less than four years.[7] Other national securities exchanges that previously had a five-year retention period for customer complaint information have amended their rules to reduce the record retention period for this information from five years to four years.[8] The Exchange believes that amending Rule 4.3 to align its recordkeeping provisions with those contained in the rules of other SROs will promote consistency and uniformity, enhance regulatory efficiencies, and reduce the compliance burden on ETP Holders that would result from the application of different retention periods for customer complaints and any actions with respect thereto.

The Exchange is proposing to further amend Rule 4.3 by deleting paragraph (b), which provides that, upon an ETP Holder's receipt of a complaint, a copy shall be forwarded promptly to the Exchange and a report of the action taken by the ETP Holder on the complaint shall also be forwarded to the Exchange. The Exchange notes that this requirement to report upon receipt of a customer complaint and upon any action with respect thereto is not present in the rules of other SROs.[9] The Exchange believes that maintaining a separate and distinct reporting requirement for customer complaints and actions in response thereto would be contrary to the considerations of uniformity and consistency that the Exchange is seeking to advance in proposing the amendments to Rule 4.3.

The Exchange notes that there are already mechanisms in place in the securities industry that provide for the prompt reporting of complaints, settlements and other matters that present issues of potential regulatory concern (*e.g.,* written complaints

[5] Rule 1.5E.(1) defines ETP as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[6] Current Rule 4.3(c) defines a ''complaint'' as ''any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of an ETP Holder or persons acting under the control of the ETP Holder in connection with (1) the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the Exchange or (2) the disposition of securities or funds of that customer which activities are related to such a transaction.''

[7] FINRA Rule 4513 requires that ''[e]ach [FINRA] member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under this Rule at the office of supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA.''

[8] *See, e.g.,* BATS Exchange, Inc. and BATS Y-Exchange Inc. Rule 4.3; *See also* Securities Exchange Act Release No. 74656 (April 6, 2015), 80 FR 19381 (April 10, 2015) (SR–BATS–2015–25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints) *and* Securities Exchange Act Release No. 74703 (April 10, 2015), 80 FR 20520 (April 16, 2015) (SR–BYX–2015–20) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints).

[9] *See* FINRA Rule 4513, BATS Exchange, Inc. and BATS Y-Exchange, Inc. Rule 4.3. *See also* EDGA Exchange, Inc. and EDGX Exchange Inc. Rule 4.3, Record of Written Complaints.

alleging fraud or misappropriation of customer funds or securities, and settlements in excess of certain monetary amounts).[10] The Exchange believes that maintaining a separate and distinct reporting requirement in its rules for customer complaints and actions in response thereto imposes an unnecessary regulatory and compliance burden on ETP Holders. Moreover, ETP Holders are obligated to furnish complaint information to the Exchange upon request and the proposed rule change does not in any way alter or impact that Exchange's ability to access that information.[11]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b)[12] of the Exchange Act. Specifically, the Exchange believes that its proposal is consistent with the requirements of section 6(b)(5)[13] that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Aligning the requirements of Rule 4.3 with the rules of other SROs will provide a further harmonization of securities industry rules applicable to ETP Holders. This will result in greater uniformity, enhanced regulatory efficiency, and a reduced potential for inconsistent regulatory approaches with regard to customer complaint recordkeeping and reporting.

Similarly, the Exchange's proposal to delete paragraph (b) of Rule 4.3, thereby eliminating the requirement that complaints and the ETP Holder's action with respect thereto be reported to the Exchange, is consistent with section 6(b)(5) of the Act in that it will remove a requirement that, if left in place, imposes an unnecessary regulatory and compliance burden and detracts from the goal of fostering cooperation and coordination in the regulation of ETP Holders. Deleting the separate and distinct reporting requirement will also provide consistency and avoid regulatory duplication, which will operate to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange further submits that removing the reporting requirement will alleviate a regulatory and compliance obligation and allow regulatory resources to be directed to matters with greater impact to the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule amendment will impose any burden on competition that is not reasonable or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue in the U.S. securities markets or have any impact on competition in those markets because it is intended to provide for greater harmonization of Exchange rules with the rules of other SROs. The Exchange submits that the proposed amendment will promote regulatory efficiency and consistency while reducing the regulatory compliance burden on ETP Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received comments on the proposed rule change from market participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2015–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2015–03. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[10] *See, e.g.,* FINRA Rule 4530, Reporting Requirements.

[11] Specifically, Rule 4.2, Furnishing of Records, provides, in relevant part, that ''[e]very ETP Holder shall furnish to the Exchange, upon request and in a time and manner required by the Exchange . . . any records, files or financial information pertaining to transactions executed on or through the Exchange . . . [and] the [E]xchange shall be allowed access, at any time, to the books and records of the ETP Holder in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange.''

[12] 15 U.S.C. 78(f)(b).

[13] 15 U.S.C. 78(f)(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2015–03 and should be submitted on or before July 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16728 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75354; File Nos. SR–BATS–2015–37; SR–BYX–2015–25; SR–EDGA–2015–19; SR–EDGX–2015–21]

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; EDGA Exchange, Inc.; and EDGX Exchange, Inc.; Order Approving Proposed Rule Changes, as Modified by Amendment No. 1, Relating to Liquidity Requirements for Securities Admitted to Unlisted Trading Privileges

July 2, 2015.

I. Introduction

On May 5, 2015, BATS Exchange, Inc. (''BATS''); BATS Y-Exchange, Inc. (''BYX''); EDGA Exchange, Inc. (''EDGA''); and EDGX Exchange, Inc. (''EDGX'') (each, an ''Exchange'' and, collectively, the ''Exchanges'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes to amend each Exchange's Rule 11.2, ''Securities Eligible for Trading,'' to indicate that the Exchanges may determine not to designate for trading any security admitted to unlisted trading privileges that does not meet certain consolidated average daily trading volume thresholds. On May 15, 2015, the Exchanges each filed Amendment No. 1 to their respective proposals.[4] The proposed rule changes, as amended, were published for comment in the in the **Federal Register** on May 22, 2015.[5] The Commission received two comment letters regarding the proposals.[6] This order approves the proposed rule changes, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Description of the Proposals

Each Exchange proposes to amend its rules by adding new paragraphs (b), (c), and (d) to Rule 11.2.[7] Proposed Rule 11.2(b) provides that an Exchange may determine not to designate for trading any security admitted to unlisted trading privileges on the Exchange when that security's consolidated average daily volume is equal to or less than 2,500 shares during the preceding 90 calendar days.[8] An Exchange may begin trading a security that it had previously not designated for trading pursuant to proposed Rule 11.2(b) if the security's consolidated average daily trading volume exceeds 5,000 shares over any 90 calendar day period since the security was not designated for trading.[9] An Exchange would be required to notify its members at least one trading day in advance of any securities it is making unavailable for trading pursuant to proposed Rule 11.2(b), and of any securities it is making available for trading pursuant to proposed Rule 11.2(c).[10]

Each Exchange would retain discretion over whether to determine not to quote and trade securities that meet the criteria in proposed Exchange Rules 11.2(b) and 11.2(c).[11] In determining whether to exercise its discretion under proposed Exchange Rules 11.2(b) and 11.2(c), an Exchange would consider such factors as member and investor feedback, as well as whether other non-listing exchanges have decided to cease quoting and trading in the affected securities.[12]

The Exchanges state that the proposals may facilitate an improvement in market quality for the affected securities, which could increase investor interest in trading these securities. In particular, the Exchanges believe that concentrating the quoted liquidity in the affected securities on the listing exchange will provide liquidity providers with an incentive to quote more competitively on the listing exchange, resulting in narrower bid-ask spreads and greater quoted depth of book. Specifically, the Exchanges believe that liquidity providers will have an incentive to quote more competitively because concentrating the quoted liquidity on the listing exchange would: (i) Reduce liquidity providers' risk of adverse selection when quoting in a fragmented market; (ii) provide greater certainty of execution on the one exchange at which liquidity providers are quoting; and (iii) enhance competition for order book priority at the national best bid or offer and throughout the depth of book. In addition, the Exchanges state that concentrating liquidity on the listing exchange could provide the listing exchange with flexibility to innovate with alternative market structures, such as variable tick sizes or periodic batch auctions, that currently are not possible under Regulation NMS when multiple exchanges are quoting and trading the securities. The Exchanges believe that such alternative market structures could further enhance the market quality of the affected securities.[13]

III. Summary of Comments Received

The Commission received two comment letters regarding the proposals, both of which supported the proposals.[14] One commenter stated that the proposals were ''a reasonable approach to addressing the persistent problem of trading illiquid securities in

[4] Each Amendment No. 1 amended and replaced its original proposal in its entirety.

[5] *See* Securities Exchange Act Release Nos. 74987 (May 18, 2015), 80 FR 29769 (''BATS Notice''); 74988 (May 18, 2015), 80 FR 29781 (''BYX Notice''); 74986 (May 18, 2015), 80 FR 29772 (''EDGA Notice''); and 74985 (May 18, 2015), 80 FR 29778 (''EDGX Notice'').

[6] *See* letters to Brent J. Fields, Secretary, Commission, from John A. McCarthy, General Counsel, KCG Holdings, Inc. (''KCG''), dated June 12, 2015 (''KCG Letter'') *available at http://www.sec.gov/comments/sr-byx-2015-25/byx201525-1.pdf;* and from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated June 15, 2015 (''SIFMA Letter'') *available at http://www.sec.gov/comments/sr-bats-2015-37/bats201537-1.pdf.*

[7] The existing provisions of Rule 11.2 will be included in proposed subparagraph (a).

[8] *See* proposed Exchange Rule 11.2(b). Based on internal statistics, the Exchanges anticipate that approximately 700 securities would meet this criterion.

[9] *See* proposed Exchange Rule 11.2(c).

[10] *See* proposed Exchange Rule 11.2(d).

[11] *See* proposed Exchange Rule 11.2(c).

[12] *See* BATS Notice, 80 FR at 29770; BYX Notice, 80 FR at 29782; EDGA Notice, 80 FR at 29773; and EDGX Notice, 80 FR at 29779.

[13] *See* BATS Notice, 80 FR at 29770–29771; BYX Notice, 80 FR at 29782–29783; EDGA Notice at 80 FR at 29773–29774; and EDGX Notice at 80 FR 29779–29780.

[14] *See* note 6, *supra.* The KCG Letter was addressed to File No. SR–BYX–2015–25, and the SIFMA Letter was addressed to File No. SR–BATS–2015–37. Because the proposals are substantially similar, the Commission believes it is appropriate to consider the comments with respect to all of the proposals.

a fragmented market.'' [15] Another commenter stated that the market quality of less liquid securities could be improved if their exchange trading presence was concentrated on the listing exchange.[16] Both commenters expressed support for similar initiatives by other exchanges, with one commenter encouraging other exchanges to consider expanding the scope of less liquid securities that would be subject to a concentrated trading threshold.[17]

One commenter stated that by providing the primary listing exchange with exclusivity in the quoting and trading of thinly-traded securities, the proposals would allow the listing exchange to better innovate its market structure for these securities, which likely would lead to improved market quality for the securities.[18] At the same time, the commenter stated that that the voluntary nature of the program should act as a check to assure that the listing exchange does not abuse its monopoly position.[19] The commenter noted, further, that the proposals are an incremental market structure adjustment, unlike other recent initiatives that the commenter characterized as being larger in scope and potentially disruptive.[20]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as amended, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule changes, as amended, are consistent with Section 6(b)(5) of the Act,[22] which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposals will provide transparency by signaling each Exchange's general intention to voluntarily refrain from trading any security that does not meet the consolidated average daily trading volume threshold established in Rule 11.2(b), and to continue to refrain from trading such a security until the security satisfies the requirements of Rule 11.2(c). The proposals also make clear that the Exchanges will retain discretion to quote and trade the affected securities. [23] In determining whether to exercise this discretion, the Exchanges have represented that they will consider such factors as member and investor feedback, and whether other non-listing exchanges have decided to cease quoting and trading the affected securities.

The Commission notes that each Exchange is required to notify its members at least one trading day in advance of any securities that it is making unavailable for trading pursuant to Rule 11.2(b), and of any securities it is making available for trading pursuant to Rule 11.2(c).[24] The Commission notes, further, that the Exchanges believe that the proposals potentially could enhance the market quality of the affected securities, and that the commenters similarly supported the proposals as a step toward improving the market quality of less liquid securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule changes (File Nos. SR–BATS–2015–37; SR–BYX–2015–25; SR–EDGA–2015–19; and SR–EDGX–2015–21), as amended, are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16727 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

[15] KCG Letter at 1.

[16] *See* SIFMA Letter at 1–2.

[17] *See* SIFMA Letter at 2; KCG Letter at 3. While expressing support for the current proposals, one commenter indicated that it would oppose any proposal to establish concentrated exchange trading for actively traded stocks. The commenter also stated that the initiative to concentrate exchange trading must allow for the continuation of off-exchange trading of illiquid securities which, in the commenter's view, provides important supplementary benefits to exchange trading. *See* SIFMA Letter at 2.

[18] *See* KCG Letter at 2.

[19] *See id.*

[20] *See id.*

[21] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78(b)(5).

[23] *See* Rule 11.2(c).

[24] *See* Exchange Rule 11.2(d).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75356; File No. SR–FINRA–2015–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Expand FINRA's Alternative Trading System (''ATS'') Transparency Initiative To Publish OTC Equity Volume Executed Outside ATSs

July 2, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to expand FINRA's alternative trading system (''ATS'') transparency initiative to publish the remaining equity volume executed over-the-counter (''OTC'') by FINRA members, including, among other trading activity, non-ATS electronic trading systems and internalized trades.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under FINRA rules, each member that operates an ATS is required to report its weekly volume, by security, to FINRA and also must use a unique market participant identifier (''MPID'') for reporting order and trade information to FINRA. As part of these requirements, FINRA makes the reported volume and trade count information for equity securities publicly available on its Web site.[3] Pursuant to the proposed rule change, FINRA is proposing to amend Rules 6110 and 6610 to expand this transparency initiative by publishing the remaining OTC equity (or ''non-ATS'') volume by member firm and security.

FINRA is proposing to derive a firm's non-ATS volume information directly from OTC trades reported to FINRA's equity trade reporting facilities.[4] As such, members would not have any new or additional reporting requirements as a result of the proposed rule change. FINRA would base a firm's non-ATS volume on trades reported for dissemination purposes (or ''tape reports'') on which the firm is identified as the member with the trade reporting obligation.[5] A firm's published trading volume information would not include trades for which the firm is the reported contra party,[6] nor would it include trades that are reported for regulatory or clearing purposes only (or ''non-tape reports'').

FINRA is proposing to publish on the FINRA Web site weekly volume information (number of trades and shares) by firm and security, with limited *de minimis* exceptions noted below, on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication.[7] Specifically, volume information would be published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the ''Limit Up/Limit Down Plan'')[8] and a four-week delayed basis for all other NMS stocks and OTC Equity Securities.[9]

Based on feedback FINRA has received from firms, FINRA is also proposing to publish aggregate volume totals across all NMS stocks and aggregate volume totals across all OTC Equity Securities for each calendar month. FINRA proposes to publish monthly aggregate totals on a one month delayed basis, *e.g.,* totals for the month of April would be published on or around June 1.

FINRA is proposing to publish non-ATS volume information at the firm level and not on an MPID-by-MPID basis. FINRA believes that this is appropriate because outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace. For members that use more than one MPID for their non-ATS trading,[10] FINRA proposes to aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single ''parent'' identifier or firm name.[11] FINRA notes that a firm's ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.

FINRA does not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace. Accordingly, as described in more detail below, FINRA is proposing to combine volume from all members that do not meet a specified minimum threshold and publish such ''*de minimis*'' volume information for those members on an aggregated basis. For example, if five firms each execute 10 trades in the reporting period in a security, their 50 trades would be aggregated and published as a single line item; the firms and their volume information would not be identified separately. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs would be combined for purposes of determining whether the *de minimis* threshold has been met.

FINRA is proposing to establish a *de minimis* threshold of fewer than on average 200 non-ATS transactions per day executed by the firm across all securities or in a specific security during the one-week reporting period. This proposed threshold is based on the level of trading activity used by the SEC to identify ''small market makers'' for purposes of exemptive relief from the rule requiring market centers that trade NMS securities to make publicly available electronic reports that include uniform statistical measures of execution quality (SEC Rule 605 of Regulation NMS).[12] In developing its proposal, FINRA reviewed volume statistics for firms across all securities for a one-week period (June 23–29, 2014). This review indicated that without applying any threshold, approximately 300 individual firms would have volume attributed by name. Looking at market participants with on average 200 or more trades per day across all securities, approximately 62 firms would have volume attributed by

[3] FINRA currently does not publish ATS volume information regarding fixed income securities.

[4] FINRA's equity trade reporting facilities (collectively referred to herein as the ''FINRA Facilities'') are the Alternative Display Facility (''ADF'') and the Trade Reporting Facilities (''TRF''), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility (''ORF''), to which members report transactions in ''OTC Equity Securities,'' as defined in FINRA Rule 6420 (*i.e.,* non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

[5] Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the ''executing party,'' defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. *See* Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

[6] FINRA is proposing to include only volume from the executing party perspective because otherwise, published OTC volume would be overstated (*i.e.,* publishing volume from both the executing party and contra party perspectives would double count that executed volume).

[7] *See* Rule 4552.

[8] Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. *See* NMS Plan to Address Extraordinary Market Volatility. FINRA will make changes to the Tier 1 NMS stocks in accordance with the Indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes place in June.

[9] FINRA notes that non-ATS volume data will be displayed in the same format in which ATS volume data is displayed today, *i.e.,* aggregate volume for each firm across all NMS stocks (Tier 1 and all other NMS stocks) and OTC equity securities; aggregate volume for each security across all firms; and volume for each security by each firm (except with respect to the *de minimis* volume discussed below).

[10] For example, a firm may use separate MPIDs for its proprietary and agency desks.

[11] FINRA is able to identify all MPIDs belonging to a given firm based on currently available information, and as such, members will not have a new reporting obligation as a result of this proposal.

[12] Specifically, the SEC exempted any market center that reported fewer than 200 transactions per trading day on average over the preceding six-month period in securities that are covered by the rule. *See* letter from Annette L. Nazareth, Director, Division, to Richard Romano, Chair, and Carl P. Sherr, Co-Chair, NASD Small Firms Advisory Board, dated June 22, 2001.

name and would account for 98.99 percent of all trading volume.

Thus, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA would aggregate the firm's volume with that of similarly situated firms. Additionally, because the published volume data would be broken down by security, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would aggregate the firm's volume in that security with that of similarly situated firms, even if the firm averages more than 200 non-ATS transactions per day across all securities during the reporting period. FINRA notes that all of the OTC volume would be published, but for members that meet the *de minimis* threshold, their volume would not be attributed by name.

The proposed rule change will provide additional transparency into a significant portion of the OTC market.[13] Accordingly, FINRA believes that the proposed rule change will enable the public to better understand a firm's equity trading activity off exchanges by reviewing the proposed non-ATS volume together with the current ATS volume reports. In this regard, FINRA notes that during the rulemaking process on the ATS transparency initiative, some commenters recommended broadening the proposal to include trade information for other OTC execution venues.

FINRA considered whether dividing published volume information into more granular categories, such as by trading capacity (*i.e.,* principal versus agency or riskless principal) or by participant type (*e.g.,* market maker), would be feasible or provide additional meaningful or reliable information to market participants. Segregating the data, *e.g.,* by trading desk, would entail potentially significant development work by firms to sufficiently identify the activity for FINRA (*e.g.,* volume attributable to a market making desk) and may not be consistent across firms, while also leading to some concerns about information leakage. Thus, FINRA is not proposing at this time to publish the non-ATS volume data at more granular levels than by firm and security.

In developing its approach, FINRA staff solicited industry input prior to presenting the proposal to FINRA's Board of Governors in September 2014. In addition to discussing the proposal with a number of FINRA's industry advisory committees, FINRA staff also informally consulted a number of firms, including large and mid-size firms with a variety of business models, as well as two buy-side firms. The committees and all but one of the consulted firms were generally supportive of the proposal. Some of the consulted firms noted that the published volume information would provide market participants with a better sense of flow in a given market segment and would most likely be used for purposes of market share or other longer-term quantitative market analysis. However, because publication of the data necessarily would be delayed, the consulted firms believe that it would likely not be a valuable tool for such purposes as analyzing execution quality or making day-to-day order routing and trading decisions.

Several of the consulted firms and committee members expressed some concern about the potential for information leakage. The consulted firms agreed on the importance of delaying publication of non-ATS volume information, noting that the closer to real-time the information is published, the greater the risks that would result from disclosing a market participant's trading activity. One of the consulted firms was concerned about publication of non-ATS volume information at the market participant and security level, even on a delayed basis, asserting that other market participants would be able to download data associated with the firm's trading activity, re-engineer it to discern patterns of historical trading and identify similar patterns in future trading that could be used to their advantage (and to the firm's disadvantage). Even the firms that were generally supportive of the proposal to publish non-ATS volume information indicated that they would have concerns if the information were published at a more granular level.[14]

FINRA believes it has taken appropriate steps to address firms' concerns by delaying publication and limiting the granularity of the published information to firm and security. The proposed rule change is similar to the approach currently taken with respect to ATS volume information, and firms have not come to FINRA with any complaints regarding information leakage since FINRA began publishing ATS volume information. However, following implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, *e.g.,* to the scope of published information or the delay between trading activity and publication, based on feedback it may receive from interested parties, including firms and users of the data.

One of the consulted firms also indicated that FINRA should not charge for the data, noting that the potential value is diminished if it is another cost center for the industry. FINRA notes that it has determined not to charge a fee for the data that would be published pursuant to the proposed rule change and will make non-ATS OTC volume information available to the public for free in a downloadable format.

In addition to the oral feedback discussed above, FINRA solicited written comments on the proposal in *Regulatory Notice* 14–48 (November 2014), which are summarized below.

FINRA proposes that the effective date of the proposed rule change will be no later than 180 days after Commission approval. Thus, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2015 or first quarter of 2016 and will announce the specific date in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide additional transparency into a significant portion of the OTC market and that the increased transparency will enable market participants and investors to better understand a firm's trading

[13] For example, for the period from March 16 through April 10, 2015, approximately 59 percent of the share volume of OTC trades in NMS stocks was executed outside an ATS.

[14] For example, with respect to publishing data according to trading capacity, several of the consulted firms expressed concern that a market participant's large position holdings could be discerned from the data (*e.g.,* accumulations of proprietary positions in advance of ETF creations or secondary offerings). Similarly, the consulted firms did not believe that there would be value in getting more granular information, *e.g.,* according to desk or department, noting that since the data would be historical and not real-time, it would not change behavior in terms of accessing liquidity. One firm commented that more granular information would not be reliable or consistent across firms, because not every firm has the same business model or desk structure. In addition, several of the firms indicated that they would be less supportive of a proposal that requires them to comply with a new reporting regime or undertake development work to be able to identify, *e.g.,* volume attributable to a market making desk.

[15] 15 U.S.C. 78*o*–3(b)(6).

volume and market share in the equity market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA's current rules require each member that operates an ATS to report its weekly trade volume information to FINRA. As part of these requirements, FINRA makes the information for equity securities available to the public, thereby providing market participants and investors useful information about trading activity in the ATS segment of the OTC equity market. The proposed rule change will expand this transparency initiative by publishing the remaining OTC equity volume reported to FINRA. The increased transparency will enable the market to better understand a firm's trading volume, its market share in the equity market and the amount of OTC trading in each equity security.

Anticipated Benefits

The proposed rule change would expand the benefits of FINRA's ATS transparency initiative by providing additional transparency to the remaining equity volume executed in the non-ATS segment of the OTC equity market. The trading activity in this non-ATS segment represents a significant portion of the overall equity trading in the OTC market.[16] The increased transparency would enable market participants and investors to better understand the overall equity trading in the OTC market as well as the amount of OTC trading in individual equity securities. Furthermore, the expansion of transparency would help the marketplace better understand a firm's overall OTC trading of equities, thereby enhancing their understanding of executing firms' trading volume and market shares in the equity market.

Anticipated Costs

The proposed rule change would not impose any additional reporting requirements on firms since FINRA will directly derive the non-ATS volume data from OTC trades reported to FINRA's equity trade reporting facilities. As a result, the proposed rule would have minimal impact on firms from a systems development and reporting perspective.

Other Economic Impacts

In developing this proposal, FINRA considered whether a firm's trading strategy could be discerned from the published data. FINRA believes that the proposed rule change mitigates such information leakage concerns by delaying the publication of trading volumes and by limiting the granularity of the published information. The proposed rule change is a well-calibrated effort to reduce information leakage concerns and to provide market participants access to meaningful information on non-ATS trading activity. FINRA believes that the proposed rule change will not impose differential risks of information leakage on firms. Moreover, by expanding transparency to all OTC equity trading by FINRA members, the proposed rule change would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market, thereby reducing any competitive distortions that may be associated with such information gaps.

Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposed rule change. For example, FINRA considered whether publishing volume information at a more granular level (*e.g.* by trading capacity or by participant type) would provide additional useful information to market participants, and the costs associated with such an alternative. FINRA believes that segregating the data, *e.g.,* by trading desk, would entail significant development work by firms, without commensurate benefit to market participants. In addition, as discussed in more detail above, several commenters raised concerns about information leakage with publishing more granular data. Accordingly, FINRA has determined not to publish data at a more granular level than by firm and security.

FINRA also considered publishing non-ATS volume information at the MPID level, as opposed to the firm level. FINRA believes that publishing information at the firm level is more appropriate because not all firms have a separate MPID for each unique trading center at the firm. Accordingly, publishing volume information at the firm level would likely provide more consistent information to the marketplace.

In developing this proposal, FINRA also considered alternative approaches related to publishing volume information for firms with minimal non-ATS trading activity. As discussed in more detail above, FINRA does not believe that publishing volume information separately for each firm with minimal trading would provide meaningful information to the marketplace. Accordingly, FINRA is proposing to combine volume from all members with trading activity below a *de minimis* threshold of on average 200 transactions per day. FINRA considered several alternative *de minimis* thresholds and solicited comment on these alternatives in *Regulatory Notice* 14–48. FINRA believes that the proposed *de minimis* threshold is reasonable as it would account for the vast majority[17] of the total non-ATS trading volume and is also consistent with the level of trading activity used by the SEC to identify ''small market makers'' for SEC Rule 605 of Regulation NMS.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 14–48 (November 2014). Three comments were received in response to the *Regulatory Notice.*[18] A copy of the *Regulatory Notice* is attached as Exhibit 2a.[19] Copies of the comment letters

[16] *See, e.g.,* Laura Tuttle, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks'' (March 2014). Tuttle reports that the non-ATS segment of the OTC market in NMS stocks is larger than the ATS segment.

[17] As discussed above, based on its review of recent trading volume statistics, FINRA estimates that the proposed *de minimis* threshold would account for approximately 99% of the overall non-ATS trading volume, and as a result the vast majority of the trading volume would be attributed by firm name under the proposed rule change.

[18] *See* Letter from Stéphane Tyč, Co-founder, Quincy Data, LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 9, 2015 (''QD Letter''); letter from John Ramsay, Chief Market Policy and Regulatory Officer, IEX Services LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 12, 2015 (''IEX Letter''); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 20, 2015 (''SIFMA Letter'').

[19] The Commission notes that the Exhibits referred to herein, as well as the comment letters cited in the footnotes, are attached to the filing itself and not to this Notice.

received in response to the *Regulatory Notice* are attached as Exhibit 2c. The comments are summarized below.

All three commenters generally supported the proposal. One commenter specifically noted that the data can be used by market participants, regulators and academics to better understand and track trends in OTC trading generally, and can also help investors better evaluate the routing and execution practices of individual firms.[20] This commenter agreed with the proposal to publish non-ATS volume information at the firm (rather than MPID) level, while another commenter disagreed with this aspect of the proposal, stating that the trade publication should identify the matching engine with a unique identifier.[21] FINRA agrees that publication at the MPID level makes sense in the context of ATS executions; however, as noted above, outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace.

One commenter agreed with the proposal to aggregate volume information for firms with a *de minimis* amount of OTC volume, noting that it is a reasonable way to assure that the published information will be meaningful and free of the ''noise'' that could otherwise arise from a broader publication measure.[22] On the other hand, another commenter disagreed with the proposal to aggregate data for firms with a *de minimis* amount of trading, noting that they believe in simple rules with no exceptions.[23] However, this commenter did not discuss the potential value of publishing unaggregated volume information for firms with only a small number of trades. As discussed above, FINRA does not believe that publishing volume information below the proposed *de minimis* threshold would provide meaningful information to the marketplace.

One commenter suggested using an alternate notional volume measure as part of the *de minimis* threshold so that firms doing relatively few trades but in large notional volume are included.[24] FINRA believes that the potential costs and additional resources, including technology infrastructure, that would be required to implement a second *de minimis* threshold measure would outweigh any potential benefit. In addition, FINRA is concerned that utilizing two different threshold measures may be confusing to consumers of the data, and believes that a single threshold measure, based on number of trades, would be the simplest and easiest to understand. However, as noted above, following implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, including whether changes to the *de minimis* threshold would be appropriate, based on feedback it may receive from interested parties.

Another commenter expressed concern that the proposed two-week publication timeframe for Tier 1 NMS stocks may result in unintended information leakage, and in particular disclosure of large institutional trades, which could enable reverse engineering of those trades if published within two weeks of execution.[25] To address the information leakage concerns, this commenter recommended aggregation on a monthly, not weekly basis, and publishing on a four-week delayed basis. Another commenter stated that a delay of one month is sufficient to enable broker-dealers to manage their risk, but also recommended that FINRA consider the shortest publication time that provides enough time to manage the risk of a position, which could differ by security class (*e.g.,* two weeks for liquid equities and six months for illiquid bonds).[26] This commenter further noted that it supports the publication of complete and fully granular data, without specifying the level of granularity or how to mitigate the attendant risk of information leakage.[27]

As discussed above, FINRA considered the potential for information leakage in developing its proposal and believes that it has taken adequate steps to mitigate that potential by, among other things, proposing to publish non-ATS volume information on the same delayed basis that is used for ATS volume data, as well as at the firm, rather than MPID, level and not further segregating volume information by trading capacity or trading desk.

One commenter opposes FINRA charging for non-ATS volume information.[28] As noted above, FINRA has determined not to charge for the non-ATS volume information that would be published pursuant to the proposed rule change.

Finally, several comments submitted on *Regulatory Notice* 14–48 are not germane to the proposal. One commenter urged FINRA to eliminate the current requirement for ATSs to report volume information to FINRA.[29] FINRA notes that elimination of the ATS volume reporting requirement will be addressed in a separate proposed rule change by FINRA. Another commenter proposed an alternative to the consolidated audit trail,[30] which is not germane to the proposed rule change and does not warrant a specific response.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[20] *See* IEX Letter.

[21] *See* QD Letter.

[22] *See* IEX Letter.

[23] *See* QD Letter.

[24] *See* IEX Letter.

[25] *See* SIFMA Letter.

[26] *See* QD Letter. FINRA notes that the proposed rule change applies only to OTC equity volume; information for fixed income securities would not be published as part of this proposal.

[27] *See* QD Letter.

[28] *See* SIFMA Letter.

[29] *See* SIFMA Letter.

[30] *See* QD Letter.

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–020 and should be submitted on or before July 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16729 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75353; File No. SR–NYSE–2015–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Its Price List To Revise: (i) The Non-Tier Adding Credit; (ii) Certain Fees for Executions at the Close; (iii) Credits Applicable to Designated Market Makers; (iv) Credits Applicable to Supplemental Liquidity Providers; and (v) Pricing Related to the Retail Liquidity Program Under Rule 107C as it Relates to Designated Market Maker Transactions, and To Make Non-Substantive Changes to the Price List

July 2, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 26, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its price list to revise: (i) The non-tier adding credit; (ii) certain fees for executions at the close; (iii) credits applicable to designated market makers; (iv) credits applicable to supplemental liquidity providers; and (v) pricing related to the retail liquidity program under rule 107c as it relates to designated market maker transactions, and to make non-substantive changes to the price list. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to revise (i) the Non-Tier Adding Credit; (ii) certain fees for executions at the close; (iii) credits applicable to Designated Market Makers (''DMMs''); (iv) credits applicable to Supplemental Liquidity Providers (''SLPs''); and (v) pricing related to the Retail Liquidity Program under Rule 107C as it relates to DMM transactions, and to make non-substantive changes to the Price List. The Exchange proposes to implement the fee change effective July 1, 2015.

Member Organization Non-Tier Adding Credit

Member organizations are currently eligible for the Non-Tier Adding Credit for all orders in securities priced $1.00 or more, other than Midpoint Passive Liquidity (''MPL'')[4] and Non-Display Reserve orders, that add liquidity to the NYSE unless a higher credit applies. The applicable rate for the Non-Tier Adding Credit is $0.0015 per share. The Exchange proposes to lower this credit to $0.0014 per share. The credits applicable to MPL orders and Non-Display Reserve orders would be unchanged.

Executions at the Close

The Exchange currently charges member organizations $0.00095 per share for market-at-the-close (''MOC'') and limit-at-the-close (''LOC'') orders, unless a member organization meets specified thresholds set forth in the Price List for MOC and LOC activity. The Exchange proposes to increase this fee by $0.00005 to $0.0010 per share and to identify this pricing tier in the Price List as Non-Tier MOC/LOC.

The Exchange currently charges $0.00065 per share for all MOC and LOC orders from any member organization executing (i) an ADV of MOC and LOC activity on the Exchange in the month of at least 0.375% of consolidated ADV (''CADV'') in NYSE-listed securities during the billing month (''NYSE CADV''); or (ii) an ADV of MOC and LOC activity on the Exchange in that month of at least 0.30% of NYSE CADV plus an ADV of total close activity (*i.e.,* MOC and LOC and other executions at the close) on the Exchange in that month of at least 0.475% of NYSE CADV. The Exchange proposes to increase this fee to $0.00070 per share and to identify this pricing tier in the Price List as MOC/LOC Tier 2.

The Exchange does not propose to change the fee of $0.0006 per share applicable to MOC and LOC orders from any member organization executing an ADV of MOC and LOC activity on the NYSE in that month of at least 0.575% of NYSE CADV. The Exchange proposes to identify this tier in the Price List as MOC/LOC Tier 1.

[4] An MPL Order is an undisplayed limit order that automatically executes at the mid-point of the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, ''PBBO''). *See* Rule 13. *See also* 17 CFR 242.600(b)(57).

DMMs

DMMs are currently eligible for a per share credit of $0.0025 when adding liquidity in shares of each More Active Security [5] if the More Active Security has a stock price of $1.00 or more and the DMM quotes at the National Best Bid or Offer (''NBBO'') in the applicable security at least 10% of the time in the applicable month (''More Active Securities Quoting Requirement''). The Exchange proposes to raise this credit to $0.0027 per share.

DMMs are currently eligible for a per share credit when adding liquidity in shares of each More Active Security if (a) the More Active Security has a stock price of $1.00 or more, (b) the DMM meets the More Active Securities Quoting Requirement, (c) the DMM Quoted Size for an applicable month is at least 15% of the NYSE Quoted Size (defined in the Price List as the ''More Active Securities Quoted Size Ratio Requirement''), and (d) the DMM's providing liquidity meets certain thresholds, as follows:

- $0.0029 per share if the DMM's providing liquidity is 15% or less of the NYSE's total intraday adding liquidity in each such security for that month; [6] or
- $0.0032 per share if the DMM's providing liquidity is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month.

The ''NYSE Quoted Size'' is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The ''DMM Quoted Size'' is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

The Exchange proposes to make the following changes to these credits:

The Exchange proposes to raise the $0.0029 per share credit to $0.0031 per share when the DMM has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size, reduced from the current requirement of 15% of the NYSE Quoted Size. In addition, the requirement that a DMM provide liquidity of 15% or less of the NYSE's total intraday adding liquidity to receive this credit would no longer apply.

The Exchange proposes to raise the $0.0032 per share credit when adding liquidity to $0.0034 per share. The requirements for this credit would remain unchanged, including the requirement to provide liquidity of more than 15% of the NYSE's total intraday adding liquidity in each such security for that month.

The Exchange proposes to delete the defined term, ''More Active Securities Quoted Size Ratio Requirement,'' as currently set forth in the Price List, as part of the changes to these credits.

In any month in which a DMM quotes at the NBBO at least 20% of the time in a security with a Security CADV [7] of less than 1,000,000 shares per month (''Less Active Securities''), such DMM receives all of the market data quote revenue (the ''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS (regardless of whether the stock price exceeds $1.00). If the DMM quotes at the NBBO in a Less Active Security [8] at least 15% of the time, but quotes less than 20% of the time in an applicable month, the DMM receives 50% of the Quoting Share.

The Exchange proposes to raise the threshold for the Security CADV of securities with respect to which DMMs would receive the Quoting Share from less than 1,000,000 shares to less than 1,500,000 shares in the previous month. A DMM would receive 50% of the Quoting Share if it quotes at the NBBO in a security that has a Security CADV of less than 1,500,000 shares in the previous month at least 15% of the time, but less than 20% of the time in an applicable month.

SLPs

SLPs are eligible for certain credits when adding liquidity to the Exchange. The amount of the credit is currently determined by the ''tier'' for which the SLP qualifies, which is based on the SLP's level of quoting and the ADV of liquidity added by the SLP in assigned securities.

Currently, SLP Tier 3 provides that when adding liquidity to the NYSE in securities with a share price of $1.00 or more, an SLP is eligible for a credit of $0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B and (2) adds liquidity for assigned SLP securities in the aggregate [9] of an ADV [10] of more than 0.20% of NYSE CADV,[11] or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),[12] more than 0.15% of NYSE CADV. The SLP Tier 3 credit in the case of Non-Displayed Reserve Orders is $0.0008. For less active SLP securities (*i.e.,* securities with an ADV in the previous month of 500,000 share or less per month (''Less Active SLP Securities'')), under SLP Tier 3, the SLP is eligible for a per share credit of $0.0028; $0.0013 if a Non-Displayed Reserve Order.

Similarly, SLP Tier 2 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0026 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.45% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.40% of NYSE CADV.[13] The SLP Tier 2 credit in the case of Non-Displayed Reserve Orders is $0.0011. For Less Active SLP Securities, under SLP Tier 2, the SLP is eligible for a per share credit of $0.0031; [$]0.0016 if a Non-Displayed Reserve Order.

SLP Tier 1 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0029 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.90% of NYSE CADV, or with respect to an SLP that is also a

[5] A ''More Active Security'' is a security with an average daily consolidated volume in the previous month equal to or greater than one million shares. *See* Price List.

[6] The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including SLPs, customers, Floor brokers and DMMs. *See* Price List.

[7] ''Security CADV'' is defined in the Price List as the average daily consolidated volume of a security.

[8] ''Less Active Securities'' are defined in the Price List as securities that have a Security CADV of less than 1,000,000 shares per month in the previous month.

[9] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM''). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

[10] The defined term, ''ADV,'' used here as defined in footnote 2 to the Price List.

[11] NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

[12] Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

[13] In determining whether an SLP meets the requirement to add liquidity in the aggregate of an ADV of more than 0.35% or 0.30% depending on whether the SLP is also a DMM, the SLP may include shares of both an SLP-Prop and an SLMM of the same member organization.

DMM and subject to Rule 107B(i)(2)(a), more than 0.85% of NYSE CADV. The SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is $0.0014. For Less Active SLP Securities, the SLP is eligible for a per share credit of $0.0034; $0.0019 if a Non-Displayed Reserve Order.

Finally, the SLP Non-Tier provides that an SLP adding liquidity in securities with a per share price of $1.00 or more that does not qualify for the credits described above is eligible for the applicable rate for the base SLP tier, which would be the rate that applies to the non-SLP activity of the member organization, *i.e.,* the non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit (''SLP Non-Tier''). In the case of Non-Displayed Reserve Orders, there is no credit under the SLP Non-Tier.

For SLP Tier 3, SLP Tier 2, and SLP Tier 1, the Exchange proposes to eliminate the higher credits that currently apply to Less Active Securities. Accordingly, regardless of the ADV of a security, SLPs would receive a per share credit of $0.0023, $0.0026, and $0.0029 for SLP Tier 3, SLP Tier 2, and SLP Tier 1, respectively and $.0008, $0.0011, and $0.0014 for Non-Displayed Reserve Orders for SLP Tier 3, SLP Tier 2, and SLP Tier 1, respectively.

In addition, for SLP Tier 1 and SLP Tier 2, the Exchange proposes to lower the ADV percentage requirement for credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A). The ADV percentage requirement for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) for SLP Tier 1 and SLP Tier 2 would decrease from 0.85% to 0.65% and 0.40% to [0.30%], respectively. The Exchange does not propose to change the ADV percentage requirement for SLP Tier 3, nor does the Exchange propose any changes to the SLP Non-Tier.

Finally, the Exchange proposes to raise the per share credits for Non-Displayed Reserve Orders for SLP Tier 3, from $0.0008 to $0.0009, for SLP Tier 2, from $0.0011 to $0.0012, and for SLP Tier 1, from $0.0014 to $0.0015.

Retail Liquidity Program

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.[14] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a ''Retail Order,'' which is defined in Rule 107C(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[15] In addition to RMOs, Retail Liquidity Providers (''RLPs'') were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of ''RPIs,'' which are non-displayed interest that is better than the PBBO.[16] Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders are currently provided with a credit of $0.0003 per share if the RLP satisfies the applicable percentage requirement of Rule 107C. RPIs of an RLP that does not satisfy the applicable percentage requirement of Rule 107C are subject to a fee of $0.0003 per share.

A fee of $0.0003 per share also currently applies to non-RLP member organization executions of RPIs against Retail Orders, unless the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs, in which case a credit of $0.0003 per share applies.

For executions of Retail Orders if executed against RPIs or MPL Orders, RMOs are not currently charged or provided with a credit (*i.e.,* they are free).[17]

The Exchange proposes a credit of $0.0020 per share for executions of an RPI by a DMM that is not an RLP against a Retail Order. The Exchange also proposes to exclude DMMs from the other rates applicable to non-RLP Member organizations in connection with the executions of RPIs against Retail Orders.

Finally, the Exchange proposes to make non-substantive changes to the Price List. Effective June 1, 2015, the Exchange eliminated the credit of $0.0010 per share for executions of Non-Displayed Reserve Orders for market participants, other than SLPs, that provide liquidity.[18] The Exchange proposes to add a line item to the Price List for Non-Displayed Reserve Orders, and to add a comma to the description of the Non-Tier Adding Credit, to make it clear in the Price List that there is no charge with respect to executions of Non-Displayed Reserve Orders for market participants, other than SLPs, that provide liquidity.

The above proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that members and member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Member Organization Non-Tier Adding Credit

The Exchange believes that the change to the Member Organization Non-Tier Adding Credit for executions of orders in securities with a per share price of $1.00 or more is reasonable, equitable and not unfairly discriminatory because it is intended to incentivize member organizations to submit additional amounts of liquidity to the Exchange to be eligible to receive the higher credits available from the Tier 1 Adding Credit, the Tier 2 Adding Credit and the Tier 3 Adding Credit. The Exchange believes that the proposed lower credit for the Member Organization Non-Tier Adding Credit is equitable and not unfairly discriminatory because it would apply equally to all member organizations.

[14] *See* Rule 107C. *See also* Securities Exchange Act Release Nos. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (establishing the Retail Liquidity Program pilot) and 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR–NYSE–2015–10) (extending the pilot period to September 30, 2015).

[15] RMO is defined in Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C to submit Retail Orders.

[16] RLP is defined in Rule 107C(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C. RPI is defined in Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the PBBO by at least $0.001 and that is identified as such.

[17] Retail Orders are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.

[18] *See* Securities Exchange Act Release No. 75139 (June 10, 2015), 80 FR 34475 (June 16, 2015) (SR–NYSE–2015–28).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

Executions at the Close

The Exchange believes that increasing the MOC/LOC Non-Tier fee to $0.0010 is reasonable because this rate would be lower than the non-tier rate, Tier F, for market-on-close and limit-on-close orders on the NASDAQ Stock Market (''NASDAQ''), of $0.0015 per executed share.[21] Similarly, the Exchange believes that increasing the MOC/LOC Tier 2 fee to $0.0007 per share is reasonable because it would be lower than the lowest fee for market-on-close and limit-on-close orders on NASDAQ, of $0.0008 per executed share. The Exchange notes that it is not changing the fee of $0.0006 for MOC/LOC Tier 1. The Exchange believes that maintaining the lowest fee for the highest liquidity requirements would incentivize member organizations to send in more closing auction volume to the primary market, thereby deepening the Exchange's liquidity pool and supporting the quality of price discovery. The Exchange believes that it is equitable and not unfairly discriminatory to charge lower fees to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, which benefits all market participants. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because all similarly situated member organizations would be subject to the same fee structure.

The Exchange believes that the proposal to add defined terms to the Price List for the MOC/LOC fee tiers is reasonable because the change would make the Price List clearer and easier to understand.

DMMs

The Exchange believes that the proposed higher credits would increase the incentive to DMMs to provide additional liquidity on the Exchange to meet the quoting and quoted size requirements for the higher credits. Moreover, the requirement is equitable and not unfairly discriminatory because it would apply equally to all DMM firms.

The Exchange believes that the $0.0031 rebate for DMMs when adding liquidity with orders, other than MPL orders, in a More Active Security if the More Active Security has a stock price of $1.00 or more and the DMM meets the More Active Securities Quoting Requirement and has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size is reasonable because the requirement for DMM Quoted Size would be reduced from 15% to 10% of the NYSE Quote Size, the DMM would still need to meet the More Active Securities Quoting Requirement of 10%, and the requirement for providing liquidity of 15% or less of the NYSE's total intraday adding in liquidity in each such security would no longer apply. The Exchange believes that maintaining the requirement for DMM Quoted Size at 15% of the NYSE Quote Size for the $0.0034 credit is reasonable as the credit for meeting that requirement would be higher than the $0.0031 credit for meeting the lower requirement of at least 10% of NYSE Quoted Size. Moreover, the requirements are equitable and not unfairly discriminatory because they would apply equally to all DMMs.

The Exchange believes that expanding the number of securities that can make a DMM eligible to receive the market data quote revenue is reasonable as it would encourage greater quoting in an expanded universe of less actives securities where there may be fewer liquidity providers. Moreover, the requirement is equitable and not unfairly discriminatory because it would apply equally to all DMMs.

SLPs

The Exchange believes that removing the higher credits for SLPs that apply to providing liquidity in Less Active Securities is reasonable and would not impose a burden on competition because the credits would be removed in their entirety and generally have not encouraged liquidity on the Exchange, as intended.

The Exchange believes that lowering the ADV percentage requirements for the SLP Tier 1 and SLP Tier 2 credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) is reasonable because lowering the requirements would increase the incentives to add liquidity and more closely compares to the requirements for SLP Tier 3. Moreover, the requirement is equitable and not unfairly discriminatory because it would apply equally to all SLPs.

The Exchange believes that increasing the credits for SLPs for Non-Displayed Reserve Orders for SLP Tier 3, SLP Tier 2 and SLP Tier 1 is reasonable because the added incentive created by the availability of the higher credit is reasonably related to an SLP's liquidity obligations on the Exchange and the value to the Exchange's market quality associated with higher volumes. The proposed changes also are equitable and not unfairly discriminatory because all similarly situated SLPs would be eligible to qualify for the rates by satisfying the related thresholds, where applicable.

Retail Liquidity Program

The Exchange believes that the proposed change to the rates under the Retail Liquidity Program is reasonable. The Exchange originally introduced the existing rates approximately three years ago.[22] At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow. The proposed new rate is a result of this review.

The proposed new rate would be set at a level that would reasonably incentivize DMMs to contribute to RPI liquidity being available for interaction with Retail Orders which would encourage more Retail Orders being submitted to the Exchange. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to allocate higher or additional credits to DMMs compared to other market participants because the higher credit is reasonably related to a DMM's affirmative obligations on the Exchange.[23] The Exchange also believes the proposed credit is equitable and not unfairly discriminatory because it will apply equally to all DMMs.

The Exchange believes that the non-substantive clarifying changes to the

[21] *See* NASDAQ Rule 7018(d).

[22] *See* Securities Exchange Act Release No. 67529 (July 27, 2012), 77 FR 46137 (August 2, 2012) (SR–NYSE–2012–30).

[23] Under Rule 104(a), DMMs registered in one or more securities traded on the Exchange have obligations with respect to the quality of the markets in securities to which they are assigned, such as engaging in a course of dealings for their own account to provide a continuous two-sided quote with reasonable size, maintaining fair and orderly markets and facilitating openings, reopenings, and the close of trading in assigned securities.

Price List are reasonable because they are designed to provide greater transparency with regard to how the Exchange assesses fees and provides rebates. The Exchange notes that the proposed non-substantive clarifying changes are not designed to amend any fee or rebate, nor to change how the Exchange assesses fees or calculates credits. In particular, the proposed changes are reasonable and equitable because they do not modify the fees or credits applicable to Non-Displayed Reserve Orders for market participants, other than SLPs, that provide liquidity.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[24] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would contribute to the Exchange's market quality by promoting price discovery and ultimately increased competition. For the same reasons, the proposed change also would not impose any burden on competition among market participants. Pricing for executions at the opening would remain at the same relatively low levels and would continue to reflect the benefit that market participants receive through the ability to have their orders interact with other liquidity at the opening.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[25] of the Act and subparagraph (f)(2) of Rule 19b–4[26] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–30 and should be submitted on or before July 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16726 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78f(b)(8).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(2).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75357; File No. SR–NYSEARCA–2015–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Discontinue Certain Fees

July 2, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 30, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to discontinue certain fees. The Exchange proposes to implement the fee change effective July 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to discontinue certain fees as described below. The Exchange proposes to implement the fee change effective July 1, 2015.

The Exchange proposes to discontinue fees for certain Manual transactions in options overlying IWM (the iShares Russell 2000 ETF).[4] In April 2015, the Exchange implemented special pricing for IWM to encourage increased Manual trading in the product and to offset losses of Manual transactions associated with options in the iShares Russell Index (RUT), which is exclusively trading on another venue.[5] The Exchange does not believe that the special pricing in IWM has achieved its intended objective of attracting additional volume.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed fee change is reasonable and equitable because the discontinuance of the special pricing for Manual transactions in IWM will result in Manual transactions in all symbols being subject to the same pricing. The Exchange further believes the proposed rule change is equitably allocated and not unfairly discriminatory because it treats similarly situated market participants in the same manner.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission notes that as described further below, the special pricing for Manual transactions in options overlying IWM is being discontinued, which will result in Manual transactions in all symbols being subject to the same pricing.

[5] *See* Exchange Act Release No. 74694 (April 9, 2015) 80 FR 20273 (April 15, 2015) (SR–NYSEArca–2015–28). Specifically, the Exchange offered volume discounts for manual transactions in IWM to NYSE Arca Market Makers, Firms and Broker Dealers. As is the case today, Customers (including Professional Customers) are not charged for manual transactions in IWM. There is currently no Lead Market Maker in IWM and, therefore, no LMM will be impacted by this proposed fee change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–53, and should be submitted on or before July 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16730 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31704; File No. 812–14460]

Macquarie Capital (USA) Inc., et al.; Notice of Application and Temporary Order

July 6, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order (''Temporary Order'') exempting them from section 9(a) of the Act, with respect to an injunction entered against Macquarie Capital (USA) Inc. (''Macquarie Capital'') on April 1, 2015 by the United States District Court for the Southern District of New York (''District Court''), until the Commission takes final action on an application for a permanent order (the ''Permanent Order,'' and with the Temporary Order, the ''Orders''). Applicants also have applied for a Permanent Order.

APPLICANTS: Macquarie Capital, Delaware Management Business Trust (''DMBT''), on behalf of its series, Delaware Management Company (''DMC'') and Delaware Investments Fund Advisers (''DIFA''), Four Corners Capital Management, LLC (''FCCM''), Macquarie Capital Investment Management LLC (''MCIM''), Macquarie Funds Management Hong Kong Limited (''MFMHK''), and Delaware Distributors, L.P. (''Delaware Distributors'') (collectively, the ''Applicants'').

FILING DATES: The application was filed on May 15, 2015 and amended on June 10, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 31, 2015, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Macquarie Capital and MCIM: 125 West 55th Street, 22nd Floor, New York, NY 10019, DMBT, FCCM and Delaware Distributors: 2005 Market Street, Philadelphia, PA 19103, and MFMHK: One International Finance Center, 1 Harbour View Street, Central, Hong Kong SAR.

FOR FURTHER INFORMATION CONTACT: Robert H. Shapiro, Senior Counsel, at (202) 551–7758, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Macquarie Capital, a Delaware corporation, is an indirect, wholly-owned subsidiary of Macquarie Group Limited (''MGL'') and a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''). MCIM, a Delaware limited liability company, is an indirect, wholly-owned subsidiary of MGL and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). DMC and DIFA are series of DMBT, which is a Delaware statutory trust and an indirect, wholly-owned subsidiary of MGL. DMBT is an investment adviser registered under the Advisers Act. FCCM, a Delaware limited liability company, is a wholly-owned subsidiary of a series of DMBT and an investment adviser registered under the Advisers Act. Delaware Distributors, a Delaware limited partnership, is an indirect, wholly-owned subsidiary of MGL and a broker-dealer registered under the Exchange Act. MFMHK is an indirect, wholly-owned subsidiary of MGL and an investment adviser registered under the Advisers Act. DMC and DIFA, as series of DMBT, MCIM, FCCM, and MFMHK (collectively, the ''Adviser Applicants'') each serve as investment adviser or investment sub-adviser to investment companies registered under the Act, or series of such companies (each, a ''Fund'')[1] and

[1] The term ''Fund'' refers to any registered investment company, including any registered unit

Delaware Distributors provides principal underwriting services to certain Funds. The Adviser Applicants and Delaware Distributers are collectively referred to as the ''Fund Servicing Applicants.''

2. While no existing company of which Macquarie Capital is an affiliated person within the meaning of section 2(a)(3) of the Act (''Affiliated Person''), other than the Fund Servicing Applicants, currently serves as an investment adviser or depositor of any Fund or principal underwriter (as defined in section 2(a)(29) of the Act) for any open-end registered investment company (''Open-End Fund''), registered UIT, or registered FACC (such activities, ''Fund Services Activities''), Applicants request that any relief granted also apply to any existing company of which Macquarie Capital is an Affiliated Person and to any other company of which Macquarie Capital may become an Affiliated Person in the future (together with the Fund Servicing Applicants, the ''Covered Persons'') [2] with respect to any activity contemplated by section 9(a) of the Act.

3. On March 27, 2015, the Commission filed a complaint (the ''Complaint'') in the District Court. According to the Complaint, Macquarie Capital was the lead underwriter on a 2010 secondary public stock offering by Puda Coal, Inc. (''Puda Coal''), which traded on the New York Stock Exchange at the time and purportedly owned a coal company in the People's Republic of China. According to the Complaint, in the offering documents, Puda Coal falsely claimed that it held a 90-percent ownership interest in the Chinese coal company. According to the Complaint, Macquarie Capital repeated those statements in its marketing materials for the offering despite obtaining a report showing that Puda Coal did not possess an ownership interest in the coal company. The Complaint alleges that two former Macquarie Capital employees were negligent by failing to act on due diligence information about the true ownership interest in the Chinese coal company and instead moving forward with the offering.[3] The Complaint alleges that Macquarie Capital was negligent as an organization by underwriting and marketing the offering while in possession of this information.

4. On April 1, 2015, the District Court entered an order (the ''Court Order'') enjoining Macquarie Capital from violating sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the ''Injunction'').[4] The Court Order also requires Macquarie Capital to pay $12 million in disgorgement and prejudgment interest and a civil monetary penalty in the amount of $3 million. Macquarie Capital consented to the entry of the Court Order without admitting or denying the allegations in the Complaint (other than those relating to the jurisdiction of the District Court and the jurisdiction of the Commission over the Conduct [5]).

5. Applicants represent that escrow accounts have been established into which have been or will be deposited amounts equal to the advisory fees paid by the Funds to the Adviser Applicants for the period from April 1, 2015 through May 15, 2015.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any Open-End Fund, UIT or FACC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that, taken together, sections 9(a)(2) and 9(a)(3) have the effect of precluding the Fund Servicing Applicants and Covered Persons from engaging in Fund Services Activities as a result of the Injunction entered against Macquarie Capital because Macquarie Capital is an Affiliated Person of each Fund Servicing Applicant and Covered Person.

2. Section 9(c) of the Act provides that, upon application, the Commission shall by order grant an exemption from the disqualification provisions of section 9(a) of the Act, either unconditionally or on an appropriate temporary or other conditional basis, to any person if that person establishes that: (a) The prohibitions of section 9(a), as applied to the person, are unduly or disproportionately severe or (b) the conduct of the person has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Fund Servicing Applicants and other Covered Persons may, if the relief is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders. On May 15, 2015, Applicants received a temporary conditional order from the Commission exempting the Covered Persons from section 9(a) of the Act with respect to the Injunction from May 15, 2015 until the Commission takes final action on an application for a Permanent Order or, if earlier, July 14, 2015.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has not been such as to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged Conduct giving rise to the Injunction did not in any way involve any of the Fund Servicing Applicants acting in their capacity as investment adviser, sub-adviser or principal underwriter for the Funds. Applicants also state that the Conduct did not involve any Fund or Fund assets with respect to which Fund Servicing Applicants engaged in Fund Services Activities. In addition, Applicants state that none of the Funds to which Fund Servicing Applicants provide Fund Services Activities purchased, held, or hold securities issued in the 2010 Puda Coal stock offering.

5. Applicants state that: (i) None of the current or former directors, officers or employees of the Fund Servicing Applicants had any involvement in the Conduct and (ii) the personnel who were involved in the Conduct have had

investment trust (''UIT'') or registered face amount certificate company (''FACC''), as well as any business development company and employees' securities company.

[2] Macquarie Capital is a party to the application, but does not and will not engage in Fund Services Activities, and is not a Covered Person.

[3] The Commission also charged former Macquarie Capital managing director Aaron Black and former Macquarie Capital investment banker William Fang for failing to exercise appropriate care in their due diligence review. Black and Fang each consented to the entry of court orders containing the same injunctions as the Court Order (as defined below).

[4] *Securities and Exchange Commission* v. *Macquarie Capital (USA) Inc., et al.,* Civil Action No. 15–CV–02304 (S.D.N.Y. April 1, 2015) (Final Judgment as to Defendant Macquarie Capital (USA) Inc.).

[5] The alleged conduct giving rise to the Injunction is referred to herein as the ''Conduct.''

no, and will not have any, involvement in providing Fund Services Activities and will not serve as an officer, director, or employee of any Covered Person providing Fund Services Activities. Applicants assert that because the personnel of the Fund Servicing Applicants did not have any involvement in the Conduct, shareholders of Funds that received investment advisory, depository and principal underwriting services from the Fund Servicing Applicants were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser, depositor or principal underwriter.

6. Applicants submit that section 9(a) should not operate to bar them from serving the Funds and their shareholders in the absence of improper practices relating to their Fund Services Activities. Applicants state that the section 9(a) disqualification could result in substantial costs to the Funds to which the Fund Servicing Applicants provide investment advisory services, and such Funds' operations would be disrupted, as they sought to engage new advisers or sub-advisers. Applicants assert that these effects would be unduly severe given the Fund Servicing Applicants' lack of involvement in the Conduct. Moreover, Applicants state that Macquarie Capital has taken remedial actions to address the Conduct, including reviewing its due diligence policies and procedures with the assistance of a number of different outside law firms, as outlined in the application. Thus, Applicants believe that granting the exemption from section 9(a), as requested, would be consistent with the public interest and the protection of investors.

7. Applicants state that the inability of the Fund Servicing Applicants to continue to provide investment advisory services to Funds would result in those Funds and their shareholders facing unduly and disproportionately severe hardships. Applicants assert that imposing the section 9(a) disqualifications upon the Adviser Applicants would deprive the shareholders of certain Funds of the advisory or sub-advisory services that they expected to receive when they decided to invest in the Funds. Applicants state that many shareholders have long-standing investments and relationships with the Funds. Applicants represent that each Adviser Applicant has developed a familiarity and expertise with a particular Fund's operations, and that replacing the Adviser Applicants with another adviser would result in inefficiencies and potential investment losses during a transition period. Applicants assert that disqualification from providing these services would disrupt investment strategies and could potentially result in large net redemptions of shares of the Funds, which in turn could both frustrate efforts to effectively manage the Funds' assets and increase the Funds' expense ratios to the detriment of non-redeeming shareholders. Applicants also note that any effort to find suitable replacement investment advisers and/or sub-advisers would necessarily take time, during which the Funds would lack advisory services, and that the cost to the Funds of obtaining shareholder approval for the new investment advisory or sub-advisory services would be substantial. Applicants further assert that the disqualification of Delaware Distributors would cause the Funds to expend time and resources to find and engage substitute principal underwriters, and that the substitute underwriters would not be able to replicate the selling network established by Delaware Distributors.

8. Applicants also represent that the boards of directors or trustees (the ''Boards'') of those Funds for which a Fund Servicing Applicant serves as the primary adviser or principal underwriter have been apprised of the consequences to the relevant Fund Servicing Applicants as a result of the issuance of the Injunction, and that such Boards have requested that the relevant Fund Servicing Applicants continue to provide services to their Funds. Applicants further state that for those Funds for which a Fund Servicing Applicant serves as a sub-adviser, Applicants have provided the primary investment advisers with written materials describing the Conduct, the Injunction, the disqualification under section 9(a) of the Act, and the process for obtaining exemptive relief under section 9(c) of the Act, and that none of the sub-advised Funds or their primary advisers has requested that the Fund Servicing Applicants cease providing sub-advisory services.

9. Applicants state that, once a Permanent Order is issued, the Fund Servicing Applicants will, as soon as reasonably practicable, distribute additional written materials with updated information to the Boards of the Funds. The written materials will include an offer to meet in person with the Boards, including the directors who are not ''interested persons'' of such Funds as defined in section 2(a)(19) of the Act and their independent legal counsel as defined in rule 0–1(a)(6) under the Act.

10. Applicants represent that they have undertaken to develop procedures reasonably designed to prevent violations of section 9(a) by Fund Servicing Applicants and their affiliated persons. Applicants state that as part of this process their legal and compliance groups have issued a firm-wide communication establishing a procedure whereby the legal and compliance personnel in each of MGL's business groups globally must identify and escalate potential cross-divisional and cross-jurisdictional impacts from a regulatory enforcement matter or litigation, including disqualifying events under applicable securities laws and regulations, to central legal and compliance management, which will further assess the event to determine, among other things, whether there exists any disqualification events under federal securities laws.

11. Applicants represent that they will engage an independent consultant (''Independent Consultant'') to review and test the existing procedures relating to compliance with section 9(a) and to recommend appropriate enhancements to ensure that the procedures are reasonably designed to prevent violations of section 9(a) by Covered Persons. Applicants state that, as part of this process, the Independent Consultant specifically will consider enhancements to the procedures to provide for the escalation of information regarding potential disqualifying events under section 9(a) so that the information may be appropriately analyzed in a timely manner. Applicants further represent that, based on the recommendations of the Independent Consultant, Applicants will implement, within 60 days of the date of the Permanent Order, enhancements to the procedures that are reasonably designed to prevent violations of section 9(a) by Covered Persons. Applicants state that, in the case of Covered Persons that are registered investment advisers, such procedures will be part of their written policies and procedures adopted and implemented pursuant to rule 206(4)–7 under the Advisers Act. In addition, Applicants state that, in the case of Delaware Distributors or any other Covered Person that serves as a principal underwriter to a registered investment company in the future, such procedures will be part of their Written Supervisory Procedures. Applicants represent that the Board of each Fund that has a Covered Person as its primary investment adviser and/or principal underwriter also will review the adequacy of these procedures and the

effectiveness of their implementation at or before the next annual review of the policies and procedures of the relevant primary investment adviser and/or principal underwriter in accordance with rule 38a–1 under the Act. Applicants further represent that, for each sub-advised Fund, the Fund Servicing Applicants will transmit such procedures to each Fund's primary investment adviser for consideration by the relevant Board in accordance with rule 38a–1 under the Act.

12. Applicants state that if the Fund Servicing Applicants were barred under section 9(a) of the Act from providing investment advisory services to the Funds, and were unable to obtain the requested exemption, the effect on their businesses and employees would be unduly and disproportionately severe because they have committed substantial capital and other resources to establishing an expertise in advising Funds. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Services Activities would not only adversely affect their businesses, but would also adversely affect their employees who are involved in those activities. Applicants state that many of these employees working for the Fund Servicing Applicants could experience significant difficulties and/or delays in finding alternative fund-related employment.

13. Applicants state that none of the Applicants has previously applied for an exemptive order under section 9(c) of the Act.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. As a condition to the Temporary Order, Applicants will continue to hold in escrow amounts equal to all advisory fees paid by the Funds to the Adviser Applicants for the period from April 1, 2015 through May 15, 2015. Amounts paid into the escrow accounts will be disbursed to the relevant Funds and/or Adviser Applicants after the Commission has acted on the application for a Permanent Order and discussions with the relevant Funds.

2. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

3. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with any terms and conditions of the Orders within 60 days of the date of the Permanent Order.

4. Macquarie Capital will comply with the Court Order.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders or Court Order within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Fund Servicing Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a) effective forthwith, solely with respect to the Injunction, subject to the representations and conditions in the application, until the date the Commission takes final action on their application for a Permanent Order.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–16812 Filed 7–8–15; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14336 and #14337]

Texas Disaster Number TX–00448

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4223–DR), dated 05/29/2015.

Incident: Severe Storms, Tornadoes, Straight Line Winds and Flooding.

Incident Period: 05/04/2015 through 06/19/2015

DATES: *Effective Date:* 07/01/2015.

Physical Loan Application Deadline Date: 07/28/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 02/29/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 05/29/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Callahan, Dallas, Dickens, Eastland, Edwards, Frio, Hartley, Hidalgo, Hill, Leon, Nueces, Parker, Real, Trinity, Victoria

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–16818 Filed 7–8–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14361 and #14362]

Arkansas Disaster #AR–00077

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4226–DR), dated 06/26/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/07/2015 through 06/15/2015.

Effective Date: 06/26/2015.

Physical Loan Application Deadline Date: 08/25/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/26/2015, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Crawford, Garland, Howard, Jefferson, Little River, Miller, Perry, Sebastian, Sevier

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Arkansas, Cleveland, Conway, Faulkner, Franklin, Grant, Hempstead, Hot Spring, Lafayette, Lincoln, Logan, Lonoke, Madison, Montgomery, Pike, Polk, Pulaski, Saline, Scott, Washington, Yell

Louisiana: Bossier, Caddo

Oklahoma: Adair, Le Flore, Mccurtain, Sequoyah

Texas: Bowie, Cass

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14361B and for economic injury is 143620.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–16816 Filed 7–8–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14334 and #14335]

Texas Disaster Number TX–00447

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4223–DR), dated 05/29/2015.

Incident: Severe Storms, Tornadoes, Straight-Line Winds and Flooding.

Incident Period: 05/04/2015 through 06/19/2015.

Effective Date: 07/01/2015.

Physical Loan Application Deadline Date: 07/28/2015.

Eidl Loan Application Deadline Date: 02/29/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of TEXAS, dated 05/29/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bowie, Brazoria, Cherokee, Ellis, Harrison

Contiguous Counties: (Economic Injury Loans Only):

Texas: Angelina, Cass, Marion, Matagorda, Morris, Red River

Arkansas: Little River, Miller

Louisiana: Caddo

Oklahoma: Mccurtain

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–16819 Filed 7–8–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14363 and #14364]

Arkansas Disaster #AR–00078

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4226–DR), dated 06/26/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/07/2015 through 06/15/2015.

Effective Date: 06/26/2015.

Physical Loan Application Deadline Date: 08/25/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/26/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clark; Crawford; Dallas; Franklin; Garland; Hempstead; Howard; Independence; Izard; Jefferson; Johnson; Lafayette; Little River; Logan; Madison; Marion; Miller; Montgomery; Nevada; Newton; Ouachita; Perry; Pike; Polk; Scott; Searcy; Sevier; Yell.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14363B and for economic injury is 14364B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–16820 Filed 7–8–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 8, 2015.

ADDRESSES: Send all comments to Craig Heilman, Director of Veterans Programs, Office of Veteran Business Development, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jessica Congemi, Office of Veterans Business Development, *jessica.congemi@sba.gov,* 202–205–6385, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: Boots to Business is an entrepreneurial education initiative offered by the U.S. Small Business Administration (SBA) as a career track within the Department of Defense's revised Training Assistance Program called Transition Goals, Plans, Success (Transition GPS). The curriculum provides valuable assistance to transitioning service members exploring self-employment opportunities by leading them through the key steps for evaluating business concepts and the foundational knowledge required for developing a business plan. Participants are also introduced to SBA resources available to help access startup capital and additional technical assistance.

The Boots to Business Post Course surveys will be online, voluntary surveys that enable the Boots to Business program office to capture data related but not limited to the effectiveness of all Boots to Business courses, quality of the instructors and materials, and number of small businesses created as a result of participating in Boots to Business. Boots to Business will send an initial survey via email to all course participants immediately following course completion to gain insight on the quality of the program. Every 6 months following course completion, a follow up survey will be sent to all participants to measure participant outcomes as we link course effectiveness to the creation of veteran owned small businesses. Participants will be surveyed twice a year for 5 years following course completion to allow time for business creation.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Boots to Business Post Course Surveys.

Description of Respondents: Service members, veterans and spouses.

Form Number: N/A.

Total Estimated Annual Responses: 26,000.

Total Estimated Annual Hour Burden: 3,474 hours.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–16817 Filed 7–8–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9183]

Culturally Significant Objects Imported for Exhibition Determinations: ''Royal Hawaiian Featherwork: Nā Hulu Ali'i'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Royal Hawaiian Featherwork: Nā Hulu Ali'i,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the imported objects at the Fine Arts Museums of San Francisco, de Young Museum, San Francisco, California, from on or about August 29, 2015, until on or about February 28, 2016, at The Bernice Pauahi Bishop Museum, Honolulu, Hawaii, from on or about March 19, 2016, until on or about May 23, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: June 30, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–16815 Filed 7–8–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9184]

Culturally Significant Objects Imported for Exhibition Determinations: ''Philippine Gold: Treasures of Forgotten Kingdoms'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Philippine Gold: Treasures of Forgotten Kingdoms,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asia Society Museum,

New York, New York, from on or about September 11, 2015, until on or about January 3, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: June 30, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–16852 Filed 7–8–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9185]

Culturally Significant Objects Imported for Exhibition Determinations: ''Treasures From the House of Alba: 500 Years of Art and Collecting'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Treasures from the House of Alba: 500 Years of Art and Collecting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Meadows Museum, SMU, Dallas, Texas, from on or about September 11, 2015, until on or about January 3, 2016, at the Frist Center for the Visual Arts, Nashville, Tennessee, from on or about February 5, 2016, until on or about May 1, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: June 30, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–16795 Filed 7–8–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35939]

Iowa Pacific Holdings, LLC and Permian Basin Railways—Continuance in Control Exemption—Illinois Company Rail Road, LLC

Iowa Pacific Holdings, LLC (IPH) and its wholly owned subsidiary, Permian Basin Railways (PBR), have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Illinois Company Rail Road, LLC (ICRR) upon ICRR's becoming a Class III rail carrier.

In a concurrently filed verified notice of exemption, ICRR seeks Board approval to lease from North Central Mississippi Regional Railroad Authority (NCMRRA), a political subdivision and regional railroad authority, and Grenada Railway, LLC (GRYR), an existing Class III short line rail carrier, and to operate, an approximately 186.82-mile rail line, consisting of (1) the Grenada Branch Line, an approximately 175.4-mile rail line extending between MP 403.0 near Southaven, Miss., (GRYR MP 491.09) and MP 703.8 near Canton, Miss., (GRYR MP 616.49); and (2) the connecting Water Valley Branch Line, an approximately 11.42-mile line extending between MP 614.42 at Bruce Jct., Miss., and the Water Valley Junction connection with the Grenada Branch Line at MP 603.0 (the Line). *Ill. Co. R.R.—Lease & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth.,* Docket No. FD 35940.

The transaction may be consummated on or after July 23, 2015 (the effective date of the exemption).

IPH is a short line holding company that currently owns rail carriers in California, Colorado, Illinois, Massachusetts, New Mexico, New York, Oregon, and Texas.

IPH, PBH, and ICRR certify that: (1) The Line does not connect with any other railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the Line with any other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than July 16, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35939, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 6, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–16799 Filed 7–8–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35940]

Illinois Company Rail Road, LLC—Lease and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC

Illinois Company Rail Road, LLC (ICRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate, pursuant to an agreement with the North Central Mississippi Regional Railroad Authority (NCMRRA) and Grenada Railway, LLC (GRYR), an approximately 186.82-mile rail line in Mississippi (the Line).[1] The Line consists of two segments: (1) The Grenada Branch Line, an approximately 175.4-mile rail line extending between MP 403.0 near Southaven, Miss., (GRYR MP 491.09) and MP 703.8 near Canton, Miss., (GRYR MP 616.49); and (2) the connecting Water Valley Branch Line, an approximately 11.42-mile line extending between MP 614.42 at Bruce Jct., Miss., and the Water Valley Junction connection with the Grenada Branch Line at MP 603.0. ICRR states that it will use GRYR's existing operating rights and interchange rights with Canadian National Railway Company (CN) to access CN's yards in Memphis, Tenn., and Canton, Miss.

In a concurrently filed verified notice of exemption, Iowa Pacific Holdings, LLC (IPH), and its wholly owned noncarrier subsidiary, Permian Basin Railways (PBR), seek an exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of ICRR upon ICRR's becoming a Class III rail carrier. *Iowa Pac. Holdings, LLC—Continuance in Control Exemption—Ill. Co. R.R.,* Docket No. FD 35939.

The transaction may be consummated on or after July 23, 2015 (30 days after the verified notice was filed). ICCR states that it expects to consummate the transaction by August 7, 2015.

ICRR certifies that the transaction's projected annual revenues will not exceed $5 million.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 16, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35940 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available at our Web site at *WWW.STB.DOT.GOV.*

Decided: July 6, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–16800 Filed 7–8–15; 8:45 am]

BILLING CODE 4915–01–P

[1] ICRR states that, pursuant to an agreement executed on June 23, 2015, NCMRRA will purchase all of GRYR's Membership Interests from its two owners. GRYR will maintain ownership of the underlying rights-of-way, track structure, operating and interchange rights, buildings and other structures, and other assets included in the sale to NCMRRA that are necessary for the provision of railroad service. Accordingly, NCMRRA and GRYR together have executed a 15-year lease and operation agreement with ICRR.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2015–0001]

Proposed Information Collections; Comment Request (No. 54)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before September 8, 2015.

ADDRESSES: As described below, you may send comments on the information collections listed in this document using the ''Regulations.gov'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *http://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2015–0001 on ''Regulations.gov,'' the Federal e-rulemaking portal, to submit comments via the Internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2015–0001 at *http://www.regulations.gov.* A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on this notice to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, recordkeeping requirements, or questionnaires:

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

OMB Number: 1513–0087.

TTB Form or Recordkeeping Requirement Number: None.

Abstract: Under section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), TTB has issued regulations regarding the labeling and advertising of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. Under these regulations, bottlers and importers of alcohol beverages must provide certain mandatory information and adhere to certain performance standards for statements made on labels and in advertisements of alcohol beverages to ensure that consumers are not deceived or mislead about a product's identity and quality.

Current Actions: TTB is submitting this collection as a revision. The information collection requirement remains unchanged. However, we are revising the burden estimate to reflect an increase in the number of respondents and the resulting burden hours resulting from an increase in the number of regulated industry members.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 9,552.

Estimated Total Annual Burden Hours: 9,552.

Title: Beer for Exportation.

OMB Number: 1513–0114.

TTB Form Number: 5130.12.

Abstract: Under 26 U.S.C. 5051, a Federal excise tax is imposed on beer removed from domestic breweries for consumption or sale. However, under 26 U.S.C. 5053, beer is exempt from this tax if it is exported in accordance with regulations issued by the Secretary of the Treasury. Under these regulations, beer may be removed from a brewery for exportation without payment of the Federal excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach the domestic market, TTB requires certification of the exportation on form TTB F 5130.12.

Current Actions: We are submitting this information collection for extension purposes only. The form, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 5,940.

Title: Usual and Customary Business Records Relating to Wine, TTB REC 5120/1).

OMB Number: 1513–0115.

TTB Recordkeeping Requirement Number: 5120/1.

Abstract: Under 26 U.S.C. 5367, 5369, 5370, and 5555, TTB regulations require wineries and taxpaid wine bottling houses to keep usual and customary business records, including purchase invoices, sales invoices, and internal records documenting the flow of materials and ingredients through fermenting, processing, packaging, storing and shipping operations. TTB routinely inspects these records to ensure the proper payment of Federal wine excise taxes by these businesses.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, we are revising the burden estimate to reflect an increase in the number of respondents due to an increase in the number of regulated industry members. We also are adjusting the reported burden hours to one hour since this information collection involves usual and customary business records which would be maintained by the regulated businesses even without the regulatory requirements to keep and make these records available for TTB inspection.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,925.

Estimated Total Annual Burden Hours: One.

Title: Bond for Drawback Under 26 U.S.C. 5131.

OMB Number: 1513–0116.

TTB Form Number: 5154.3.

Abstract: The Internal Revenue Code, at 26 U.S.C. 5111–5114, authorizes ''drawback'' (similar to a refund) of all but $1.00 per gallon of the Federal excise tax already paid on distilled spirits, if the spirits are subsequently used in the manufacture of certain nonbeverage products such as medicines, food products, flavors, and perfumes. Persons making such products must file claims proving their eligibility for drawback. Claims may be filed on either a monthly or a quarterly basis, and 26 U.S.C. 5114(b) authorizes the Secretary of the Treasury to require persons filing monthly claims to file a bond. The purpose of these bonds is to protect the Government in the event that after a claim is paid, a manufacturer is found not to have been eligible for some or all of the amount drawback that was paid.

Current Actions: We are submitting this information collection for extension purposes only. The form, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 52.

Estimated Total Annual Burden Hours: 10.

Dated: July 6, 2015.

Angela M. Jeffries,

Acting Director, Regulations and Rulings Division.

[FR Doc. 2015–16791 Filed 7–8–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2015, and ending on December 31,

2015, the prompt payment interest rate is 2–3/8 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW., Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

DATES: Effective July 1, 2015, to December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Attorney-Advisor, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2015, and ending on December 31, 2015, is 2–3/8 per centum per annum.

Dated: July 7, 2015.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2015–16906 Filed 7–8–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 13219, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is removing the names of three individuals whose property and interests in property are being unblocked pursuant to Executive Order 13219 of June 26, 2001, as amended by Executive Order 13304 of May 28, 2003.

DATES: OFAC's actions described in this notice are effective July 9, 2015.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On July 9, 2015, OFAC will unblock the property and interests in property of the following individuals pursuant to Executive Order 13219 of June 26, 2001, as amended by Executive Order 13304 of May 28, 2003.

Individuals

ADEMI, Rahim; DOB 30 Jan 1954; POB Karac, Serbia and Montenegro; ICTY indictee (individual) [BALKANS]

LANDZO, Esad; DOB 07 Mar 1973; ICTY indictee (individual) [BALKANS]

LJUBICIC, Pasko; DOB 15 Nov 1965; POB Nezirovic, Bosnia-Herzegovina; ICTY indictee (individual) [BALKANS]

The removal of the individuals listed above from the SDN List is effective as of July 9, 2015. All property and interests in property of these persons that are in or hereafter come within the United States or the possession or control of a United States person are no longer blocked pursuant to E.O. 13219, as amended by E.O. 13304.

Dated: July 2, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–16776 Filed 7–8–15; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 131 July 9, 2015

Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2014–BT–STD–0027]

RIN 1904–AD31

Energy Conservation Program: Energy Conservation Standards for Commercial Prerinse Spray Valves

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

ACTION: Notice of proposed rulemaking (NOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial prerinse spray valves (CPSVs). EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for commercial prerinse spray valves. The notice also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting on Tuesday, July 28, 2015. The standards meeting will start immediately following the test procedure meeting. The meeting will also be broadcast as a webinar. See section VII ''Public Participation'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this NOPR before and after the public meeting, but no later than September 8, 2015. See section VII ''Public Participation'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

Instructions: Any comments submitted must identify the NOPR for Energy Conservation Standards for commercial prerinse spray valves, and provide docket number EERE–2014–BT–STD–0027 and/or regulatory information number (RIN) number 1904–AD31. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: SprayValves2014STD0027@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed previously and by email to *Chad_S_Whiteman@omb.eop.gov.*

No faxes will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (''Public Participation'').

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

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100.* This Web page will contain a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation'' for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *jim.raba@ee.doe.gov.*

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *Peter.Cochran@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule
A. Benefits and Costs to Consumers
B. Impact on Manufacturers
C. National Benefits and Costs
II. Introduction
A. Authority
B. Background
III. General Discussion
A. Product Classes and Scope of Coverage
B. Test Procedure
C. Technological Feasibility
D. Energy Savings
1. Determination of Savings
2. Significance of Savings
E. Economic Justification
1. Economic Impact on Manufacturers and Consumers
2. Savings in Operating Costs Compared to Increase in Price
3. Energy Savings
4. Lessening of Utility or Performance of Products
5. Impact of Any Lessening of Competition
6. Need for National Energy Conservation
7. Other Factors
F. Rebuttable Presumption
IV. Methodology and Discussion of Related Comments
A. Market and Technology Assessment
1. Market Assessment
2. Efficiency Metrics
3. Product Classes
4. Technology Assessment
1. Backflow Preventers
2. Specially Designed Spray Patterns
B. Screening Analysis
1. Addition of Flow Control Insert
2. Smaller Spray Hole Area
3. Aerators
4. Additional Valves
5. Changing Spray Hole Shape
6. Venturi Meter to Orifice Plate Nozzle Geometries
C. Engineering Analysis

1. Engineering Approach
2. Product Classes
3. Baseline and Max-Tech Models
4. Manufacturing Cost Analysis
D. Markups Analysis
E. Energy and Water Use Analysis
F. Life-Cycle Cost and Payback Period Analysis
1. Product Cost
2. Installation Cost
3. Annual Energy and Water Consumption
4. Energy Prices
5. Water and Wastewater Prices
6. Maintenance and Repair Costs
7. Product Lifetime
8. Discount Rates
9. No-New-Standards Case Efficiency Distribution
10. Payback Period Analysis
11. Rebuttable-Presumption Payback Period
G. Shipments
H. National Impact Analysis
1. National Energy and Water Savings
2. Forecasted Efficiency in the No-Standards Case and Standards Cases
3. Net Present Value Analysis
I. Consumer Subgroup Analysis
J. Manufacturer Impact Analysis
1. Overview
2. Government Regulatory Impact Model
3. Discussion of Comments
4. Manufacturer Interviews
K. Emissions Analysis
L. Monetizing Carbon Dioxide and Other Emissions Impacts
1. Social Cost of Carbon
2. Valuation of Other Emissions Reductions
M. Utility Impact Analysis
N. Employment Impact Analysis
V. Analytical Results
A. Trial Standard Levels
B. Economic Justification and Energy Savings
1. Economic Impacts on Individual Consumers
2. Economic Impacts on Manufacturers
3. National Impact Analysis
4. Impact on Utility or Performance of Products
5. Impact of Any Lessening of Competition
6. Need of the Nation to Conserve Energy
7. Summary of National Economic Impacts
8. Other Factors
C. Conclusion
1. Benefits and Burdens of TSLs Considered for Commercial Prerinse Spray Valves
2. Summary of Benefits and Costs (Annualized) of the Standards
VI. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
1. Description and Estimated Number of Small Entities Regulated
2. Description and Estimate of Compliance Requirements
3. Duplication, Overlap, and Conflict With Other Rules and Regulations
4. Significant Alternatives to the Rule
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under the Information Quality Bulletin for Peer Review
VII. Public Participation
A. Attendance at the Public Meeting
B. Procedure for Submitting Prepared General Statements For Distribution
C. Conduct of the Public Meeting
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
VIII. Approval of the Office of the Secretary

I. Synopsis of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include commercial prerinse spray valves (CPSV), the subject of this document.[3]

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for commercial prerinse spray valves. The proposed standards, which are described in terms of the maximum water flow rate (in gallons per minute, gpm) for each product class (defined by spray force in ounce-force, ozf), are shown in Table I.1. The proposed standards, if adopted, would apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on or after the date 3 years after the publication of the final rule for this rulemaking. For purposes of the analyses conducted in support of this NOPR, DOE used 2015 as the expected year of publication of any final standards and 2018 as the expected compliance year.[4]

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES (COMPLIANCE STARTING 2018)

Product class	Maximum water flow rate (gpm)
1. Light duty (≤5 ozf)	0.65
2. Standard duty (>5 ozf and ≤8 ozf)	0.97
3. Heavy duty (>8 ozf)	1.24

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed amended standards on consumers of commercial prerinse spray valves, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[5] The average LCC savings are positive for all product classes. The PBP for all product classes is also less than the projected average CPSV lifetime of approximately 5 years.

[1] For editorial reasons, upon codification in the U.S. Code, part B was redesignated part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] Because Congress included commercial prerinse spray valves in part A of Title III of EPCA, the consumer product provisions of part A (not the industrial equipment provisions of part A–1) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment.

[4] Because the anticipated compliance date is late in the year 2018, for analytical purposes, DOE conducted its analyses utilizing shipments associated with the 2019–2048 period. The analytical effect is equivalent to the use of a 2019 compliance year. In the MIA, 2019 is referred to as the ''analysis compliance year.''

[5] The average LCC savings are measured relative to the no-new-standards case efficiency distribution, which depicts the CPSV market in the compliance year (see section IV.F.9). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline CPSV model (see section IV.C.1).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF COMMERCIAL PRERINSE SPRAY VALVES

Product class	Average LCC savings (2014$)	Simple payback period (years)
1. Light duty (≤5 ozf)	211	0.0
2. Standard duty (>5 ozf and ≤8 ozf)	472	0.0
3. Heavy duty (>8 ozf)	667	0.0

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this notice.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2048). Using a real discount rate of 6.9 percent,[6] DOE estimates that the INPV for manufacturers of commercial prerinse spray valves is $9.1 million in 2014$. Under the proposed standards, DOE expects that manufacturers may lose up to 21.6 percent of their INPV, which is approximately $2.0 million. Additionally, based on its analysis of available information, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits and Costs[7]

DOE's analyses indicate that the proposed standards would save a significant amount of energy and water. The lifetime savings for commercial prerinse spray valves purchased in the 30-year period (2019 to 2048) amount to 0.10 quadrillion Btu (quads)[8] and 120.18 billion gallons of water. This represents a savings of 9 percent relative to the energy use of this product in the no-new-standards case.[9] This also represents a savings of 9 percent relative to the water use of this product in the no-new-standards case.

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for commercial prerinse spray valves ranges from $0.71 billion (at a 7-percent discount rate) to $1.46 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for commercial prerinse spray valves purchased in 2019–2048.

In addition, the proposed standards would have significant environmental benefits.[10] The described energy savings would result in cumulative emission reductions (over the same period as for energy savings) of 5.76 million metric tons (Mt)[11] of carbon dioxide (CO_2), 46.94 thousand tons of methane (CH_4), 2.43 thousand tons of sulfur dioxide (SO_2), 13.22 thousand tons of nitrogen oxides (NO_X), 0.04 thousand tons of nitrous oxide (N_2O), and 0.01 tons of mercury (Hg).[12] The cumulative reduction in CO_2 emissions through 2030 amounts to 1.83 Mt, which is equivalent to the emissions resulting from the annual electricity use of about 251,719 homes.

The value of the CO_2 reduction is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[13] The derivation of the SCC values is discussed in section IV.L of this notice. Using discount rates appropriate for each set of SCC values, DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.04 billion and $0.61 billion. DOE also estimates the present monetary value of the NO_X emissions reduction is between $1.80 and $18.48 million at a 7-percent discount rate and between $3.52 and $36.15 million at a 3-percent discount rate.[14]

Table I.3 summarizes the national economic costs and benefits expected to result from the proposed standards for commercial prerinse spray valves.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES *

Category	Present value (million 2014$)	Discount rate (%)
Benefits		
Operating Cost Savings	708	7
	1,459	3
CO_2 Reduction Monetized Value ($12.2/metric ton case) **	44	5
CO_2 Reduction Monetized Value ($41.1/metric ton case) **	196	3
CO_2 Reduction Monetized Value ($63.3/metric ton case) **	309	2.5
CO_2 Reduction Monetized Value ($121/metric ton case) **	606	3

[6] The discount rate is an industry average discount rate, which was estimated using publically available industry financial data for companies that sell CPSVs in the U.S. Data sources are listed in section IV.J.1.

[7] All monetary values in this section are expressed in 2014 dollars and are discounted to 2015, unless otherwise noted.

[8] A quad is equal to 10^{15} British thermal units (Btu).

[9] The no-new-standards case assumptions are described in section IV.F.9. The no-new-standards case represents a projection of energy consumption in the absence of amended mandatory efficiency standards, and it considers market forces and policies that may affect future demand for more efficient products.

[10] The emission reductions calculated here result from the energy savings only. The emission reductions from water savings are not calculated as part of this analysis.

[11] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[12] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2014* (*AEO2014*) reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2013.

[13] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

[14] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES *—Continued

Category	Present value (million 2014$)	Discount rate (%)
NO_X Reduction Monetized Value (at $2,723/ton)	10 20	7 3
Total Benefits †	914 1,675	7 3
Costs		
Manufacturer Conversion Costs ‡	2 to 3	N/A
Total Net Benefits		
Including Emissions Reduction Monetized Value †	914 1,675	7 3

* This table presents the costs and benefits associated with commercial prerinse spray valves shipped in 2019 – 2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019 – 2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$ per metric ton, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5 percent, 3 percent, and 2.5 percent discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3 percent discount rate.

† Total benefits for both the 3 percent and 7 percent cases are derived using the series corresponding to average SCC with 3 percent discount rate. Manufacturer Conversion Costs are not included in the Total Net Benefits calculations.

‡ The lower value of the range represents costs associated with the Sourced Components conversion cost scenario. The upper value represents costs associated with the Fabricated Components conversion cost scenario. Manufacturer conversion cost estimates are based on the engineering analysis and product teardowns conducted in 2014, and, therefore, have not been discounted. In the GRIM, these values are spread over the 3-year conversion period leading up to the compliance year.

The benefits and costs of these proposed standards, for commercial prerinse spray valves sold in 2019–2048, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from consumer operation of products that meet the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase and installation costs, which is another way of representing consumer NPV); and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[15]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of commercial prerinse spray valves shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[16] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate, along with the average SCC series that has a value of $41.1 per metric ton in 2015), there are no increased product costs associated with the standards proposed in this rule, while the benefits are $69.90 million per year in reduced product operating costs, $10.94 million per year in CO_2 reductions, and $1.00 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $81.85 million per year. Using a 3-percent discount rate for all benefits and costs as well as the average SCC series that has a value of $41.1 per metric ton in 2015, there are no increased product costs associated with the standards proposed in this rule, while the benefits are $81.32 million per year in reduced operating costs, $10.94 million in CO_2 reductions, and $1.11 million in reduced NO_X emissions. In this case, the net benefit amounts to $93.37 million per year.

[15] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total customer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the first year of the analysis period, which yields the same present value.

[16] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105 (2005).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES

	Discount rate (%)	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7	69.90	65.90	72.70
	3	81.32	75.92	85.10
CO_2 Reduction at $12.0/t**	5	3.33	3.33	3.33
CO_2 Reduction at $40.5/t**	3	10.94	10.94	10.94
CO_2 Reduction at $62.4/t**	2.5	15.91	15.91	15.91
CO_2 Reduction at $119/t**	3	33.81	33.81	33.81
NO_X Reduction at $2,723/ton	7	1.00	1.00	1.00
	3	1.11	1.11	1.11
Total†	7 plus CO_2 range	74 to 105	70 to 101	77 to 108
	7	81.85	77.84	84.64
	3 plus CO_2 range	86 to 116	80 to 111	90 to 120
	3	93.37	87.96	97.15
Costs				
Manufacturer Conversion Costs †	7	0.16 to 0.24	0.16 to 0.24	0.16 to 0.24
	3	0.10 to 0.15	0.10 to 0.15	0.10 to 0.15
Total Net Benefits				
Total ‡	7 plus CO_2 range	74 to 105	70 to 101	77 to 108
	7	81.85	77.84	84.64
	3 plus CO_2 range	86 to 116	80 to 111	90 to 120
	3	93.37	87.96	97.15

* This table presents the annualized costs and benefits associated with commercial prerinse spray valves shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standard, some of which may be incurred in preparation for the rule. The primary, low benefits, and high benefits estimates utilize projections of energy prices from the *AEO2014* reference case, low estimate, and high estimate, respectively.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5 percent, 3 percent, and 2.5 percent discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3 percent discount rate.

† The lower value of the range represents costs associated with the Sourced Components conversion cost scenario. The upper value represents costs for the Fabricated Components scenario.

‡ Total benefits for both the 3 percent and 7 percent cases are derived using the series corresponding to the average SCC with 3 percent discount rate. In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values. Manufacturer Conversion Costs are not included in the Net Benefits calculations.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for the product classes covered by this proposal. See chapter 8 of the NOPR technical support document (TSD) for more discussion of the no-new-standards case efficiency distribution. Based on DOE's analyses, DOE has tentatively concluded that the benefits of the proposed standards to the nation (energy savings, water savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers).

DOE also considered both more and less stringent energy efficiency levels (EL) as trial standard levels (TSL), and will continue to consider them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of levels that incorporate the proposed standards in part.

II. Introduction

The following section discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of standards for commercial prerinse spray valves.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles. As part of this program, EPCA prescribed energy conservation standards for commercial prerinse spray valves. (42 U.S.C. 6295(dd)) Under 42 U.S.C. 6295(m), DOE must periodically review its already established energy conservation standards for a covered

product. DOE is undertaking this rulemaking to meet this EPCA requirement.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. The Secretary or the Federal Trade Commission, as appropriate, may prescribe labeling requirements for commercial prerinse spray valves. (42 U.S.C. 6294(a)(5)(A)) Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293(b)(3)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedure for commercial prerinse spray valves currently appears at title 10 of the Code of Federal Regulations (CFR) part 431, subpart O. DOE recently proposed updates to its CPSV test procedure in a proposed rule issued for prepublication on June 05, 2015 (80 FR 35874).

DOE must follow specific statutory criteria for prescribing amended standards for covered products. As indicated previously, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) Moreover, DOE may not prescribe a standard for certain products, including commercial prerinse spray valves, if no test procedure has been established for the product. (42 U.S.C. 6295(o)(3)(A))

In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I) through (VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy and water savings the consumer will receive during the first year that the standard applies, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered products that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group: (1) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (2) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6294(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE shall consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a) though (c)) California, however, has a statutory exemption to preemption for commercial prerinse spray valve standards adopted by the California Energy Commission before January 1, 2005. (42 U.S.C. 6297(c)(7)) As a result, while federal commercial prerinse spray valve standards, including any amended standards that may result from this rulemaking, apply in California, California's commercial prerinse spray valve standards also apply as they are exempt from preemption. DOE may also grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a

separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A) and (B)) DOE's current test procedures and standards for commercial prerinse spray valves do not address standby mode and off mode energy use, which are not applicable for this product. Similarly, in this rulemaking, DOE only addresses active mode energy consumption because commercial prerinse spray valves only consume energy and water in active mode.

B. Background

In a final rule published on October 18, 2005 (''2005 CPSV final rule''), DOE codified the current energy conservation standards for commercial prerinse spray valves that were prescribed by the Energy Policy Act of 2005, Public Law 109–58 (August 8, 2005). 70 FR 60407, 60410. The 2005 CPSV final rule established that all commercial prerinse spray valves manufactured on or after January 1, 2006, must have a flow rate of not more than 1.6 gpm.

DOE is conducting the current energy conservation standards rulemaking pursuant to 42 U.S.C. 6295(m), which requires that within 6 years of issuing any final rule establishing or amending a standard, DOE shall publish either a notice of determination that amended standards are not needed or a NOPR proposing amended standards.

DOE initiated the current rulemaking on September 11, 2014, by issuing an analytical Framework document, ''Rulemaking Framework for Commercial Prerinse Spray Valves'' (''2014 Framework document''), which described the procedural and analytical approaches DOE anticipated using to evaluate energy conservation standards for commercial prerinse spray valves. 79 FR 54213. DOE also announced a public meeting to discuss the proposed analytical framework for the rulemaking and invited written comments from the public. 79 FR 54213. The 2014 Framework document is available at: *www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0027-0001*.

The 2014 Framework document explained the issues, analyses, and process that DOE anticipated using to develop energy conservation standards for commercial prerinse spray valves. DOE held a public meeting on September 30, 2014, to solicit comments from interested parties regarding DOE's analytical approach. Comments received in response to DOE's proposed analytical approach have helped DOE identify and resolve issues relevant to energy conservation standards for commercial prerinse spray valves, and have informed the analyses presented in this notice. DOE discusses and responds to the comments received in response to the 2014 Framework document in section IV.

III. General Discussion

A. Product Classes and Scope of Coverage

EPCA defines the term ''commercial prerinse spray valve'' as a ''handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.'' (42 U.S.C. 6291(33)(A) In the 2015 CPSV test procedure NOPR, DOE is proposing to modify the CPSV definition to redefine the scope of coverage, as authorized under 42 U.S.C. 6291(33)(B). For specific details on the proposed modifications to the CPSV definition, including how to submit comments see the test procedure NOPR (80 FR 35874).

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE considers such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) Different energy conservation standards may apply to different product classes.

Currently, all covered commercial prerinse spray valves are included in a single product class that is subject to a 1.6-gpm standard for maximum flow rate. 10 CFR 431.266. In the 2014 Framework document, DOE considered whether to retain a single product class for all commercial prerinse spray valves, or to establish separate product classes based on the statutory criteria in 42 U.S.C. 6295(q) and comments from interested parties. See sections IV.A.2 and IV.C.2 for more discussion on the product classes addressed in this NOPR.

B. Test Procedure

EPCA established the current maximum flow rate for commercial prerinse spray valves and prescribed an industry test procedure, American Society for Testing and Materials (ASTM) Standard F2324–03, to measure the flow rate. (42 U.S.C. 6295(dd), 42 U.S.C. 6293(b)(14)) In a final rule published December 8, 2006, DOE incorporated by reference ASTM Standard F2324–03 under 10 CFR 431.263, and prescribed it as the uniform test method to measure the flow rate of commercial prerinse spray valves under 10 CFR 431.264. 71 FR 71340, 71374. In a final rule published October 23, 2013, DOE incorporated by reference ASTM Standard F2324–03 (2009) for testing commercial prerinse spray valves, which updated the 2003 version. 78 FR 62970, 62980.

In 2013, ASTM amended Standard F2324–03 (2009) to replace the cleanability test with a spray force test, based on research conducted by the U.S. Environmental Protection Agency's (EPA) WaterSense® program.[17]

In the 2015 CPSV test procedure NOPR, DOE proposed to incorporate by reference the amended ASTM Standard F2324–13. Additionally, DOE proposed requiring spray force to be measured based on the procedure in ASTM Standard F2324–13. For commercial prerinse spray valves with multiple spray patterns, DOE proposed that both flow rate and spray force be measured for each possible spray pattern.

C. Technological Feasibility

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and working prototype designs that could improve the efficiency of the products that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those options are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii) through (iv). Section IV.B of this notice discusses the results of the screening analysis for commercial prerinse spray valves, particularly the

[17] EPA WaterSense program, *WaterSense Specification for Commercial Prerinse Spray Valves Supporting Statement,* Version 1.0 (Sept. 19, 2013) (Available at: *http://www.epa.gov/watersense/partners/prsv_final.html*).

technology options DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR Technical Support Document (TSD).

When DOE proposes to adopt an amended standard for a type or class of covered products, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such products. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for commercial prerinse spray valves, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the commercial prerinse spray valves purchased in the 30-year period that begins in the expected year of compliance with any amended standards (2019–2048). The savings are measured over the entire lifetime of commercial prerinse spray valves purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption in the absence of amended mandatory efficiency standards, and it considers market forces and policies that may affect future demand for more efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from amended standards. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in site energy, which is the energy consumed by a product at the location where it is used. For electricity, DOE calculates national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate primary energy savings, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2014* (*AEO2014*).[18]

For electricity and natural gas and oil, DOE also calculates full-fuel-cycle (FFC) energy savings. As discussed in DOE's statement of policy and notice of policy amendment, the FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy efficiency standards. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). For FFC energy savings, DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products. For more information, see section IV.H.1 of this notice.

2. Significance of Savings

To adopt more stringent standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in EPCA, the U.S. Court of Appeals for DC Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for the proposed standards (presented in section V.B.3.a of this notice) are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

1. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

2. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increases in the price of the covered products that are likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including water, energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC and PBP analysis requires a variety of inputs, such as product prices, product water and energy consumption, water and sewer prices, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered

[18] U.S. Department of Energy—Energy Information Administration, *Annual Energy Outlook 2014 with Projections to 2040 (Available at: www.eia.gov/forecasts/aeo/).*

product in the first year of compliance with amended standards.[19]

The LCC savings for the considered efficiency levels are calculated relative to a no-new-standards case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience a LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this notice.

3. Energy Savings

EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H.1, DOE uses spreadsheet models to project national energy savings.

4. Lessening of Utility or Performance of Products

In determining whether a proposed standard is economically justified, DOE evaluates any lessening of the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this notice would not reduce the utility or performance of the products under consideration in this rulemaking.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)). DOE will publish and respond to the Attorney General's determination in the final rule.

6. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity may also result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how standards may affect these emissions and reports the emissions impacts from each TSL it considered in section V.B.6. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs in section IV.L.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent that interested parties submit any relevant information regarding economic justification that does not fit into the other categories described in the previous sections, DOE could consider such information under ''other factors.''

F. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. The rebuttable presumption payback calculation is discussed in section IV.F.11 of this proposed rule.

IV. Methodology and Discussion of Related Comments

DOE used several spreadsheet tools to estimate the impact of the proposed standards. One of these spreadsheet tools calculates LCCs and PBPs of potential amended energy conservation standards. Another provides shipments forecasts and then calculates impacts of potential standards on national energy savings and net present value. The Department also assessed manufacturer impacts, largely through the use of the Government Regulatory Impact Model (GRIM) spreadsheet tool. The spreadsheets are available online at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=100*.

Additionally, DOE estimated the impacts of amended standards for commercial prerinse spray valves on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses.[20] The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely known baseline energy forecast for the United States. The version of NEMS used for appliance standards analysis, which makes minor modifications to the *AEO* version, is called NEMS–BT.[21] NEMS–BT accounts for the interactions among the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the product concerned, including the purpose of the product, the industry structure, manufacturers, market characteristics, and technologies used in the product. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this commercial prerinse spray valves

[19] Because the anticipated compliance date is late in the expected compliance year, 2018, for analytical purposes, DOE assumes that customers will purchase the CPSV equipment that meets the potential amended standards in 2019. In other words, the first year of the analysis period is 2019.

[20] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009) (October 2009) (Available at: *http://www.eia.doe.gov/oiaf/aeo/overview/index.html*).

[21] EIA approves the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (BT stands for DOE's Building Technologies Office.)

rulemaking include: (1) Market assessment, (2) efficiency metrics, (3) product classes, and (4) technology assessment. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Market Assessment

As part of the market assessment, DOE examined manufacturers, trade associations, and the quantities and types of products sold and offered for sale. DOE reviewed relevant literature to develop an understanding of the CPSV industry in the United States, including market research data, government databases, retail listings, and industry publications (*e.g.,* manufacturer catalogs). Using this information, DOE assessed the overall state of the industry, CPSV manufacturing and market shares, shipments, general technical information on commercial prerinse spray valves, and industry trends.

In the Framework document, DOE sought comments regarding the market for commercial prerinse spray valves, and in particular on product features, market shares, and trends. Additionally, DOE also sought comments on which organizations had a vested interest in commercial prerinse spray valves. DOE recognized Plumbing Manufacturers International (PMI) and North American Association of Food Equipment Manufacturers (NAFEM) in the Framework document as organizations that have an interest in commercial prerinse spray valves. In addition to these trade organizations, T&S Brass suggested including the National Restaurant Association (NRA) as an organization that has an interest in commercial prerinse spray valves. (T&S Brass, Public Meeting Transcript, No. 6 at p. 30) [22] Additionally, the International Association of Plumbing and Mechanical Officials (IAMPO) commented that it tests and certifies commercial prerinse spray valves to make sure they meet mandated levels. Hence, IAMPO is also a body that has an interest in commercial prerinse spray valves. (IAPMO, Public Meeting Transcript, No. 6 at p. 30) Alliance for Water Efficiency (AWE) recommended that DOE consider service companies, such as Ecolab, as a subtype in its list of retailers. It stated that such companies provide on-demand, on-site maintenance and other services to food service operators, and have the most influence over the selection of commercial prerinse spray valves at the restaurant site. (AWE, No. 8 at p. 2) DOE acknowledges and appreciates the information provided by these interested parties.

Commenting on the commercial prerinse spray valve industry in general, T&S Brass stated that a small number of manufacturers control the majority of the market because commercial prerinse spray valves are a niche product. Two or three manufacturers have the majority of the market share. Most of the manufacturers in the industry are family-owned businesses. (T&S, Public Meeting Transcript, No. 6 at p. 58)

DOE also held phone conversations with representatives from the EPA WaterSense® program regarding the market assessment.[23] The representatives commented that the industry comprises a small number of CPSV manufacturers, most of which are private companies which do not readily provide market information.

DOE researched government databases for CPSV product listings, including DOE's Compliance Certification Management System (CCMS), the California Energy Commission (CEC) Appliance Database, and the WaterSense database. Based on this research, DOE concluded that the CPSV market includes 54 basic models from 13 different brands and 11 manufacturers. Chapter 3 provides more details on the CPSV market.

2. Efficiency Metrics

Currently, all covered commercial prerinse spray valves are included in a single product class that is subject to a 1.6 gpm standard for maximum flow rate. 10 CFR 431.266. As part of the 2014 Framework document, DOE considered adopting an alternative metric to replace the existing flow rate (gpm) metric. DOE examined alternative metrics that could achieve energy and water savings while also preserving product functionality. In the 2014 Framework document, DOE presented two alternate metrics. One alternative metric under consideration was a performance metric that takes into account both flow rate and spray force (measured in gpm divided by ozf). Another metric considered was gallons per plate washed, which was calculated using the flow rate and the cleanability time, which is defined in ASTM Standard F2324–2003, as the ''effectiveness of the prerinse spray valve to remove soil from the plate before it is placed in a dishwashing machine.'' DOE requested comments from interested parties on these suggested alternate metrics.

A joint comment submitted by the Alliance to Save Energy, the Appliance Standards Awareness Project, and the Natural Resources Defense Council (''Advocates'') supported the consideration of a metric that incorporates both flow rate and spray force because this may allow DOE to adopt an amended standard that ensures functionality, while improving water and energy efficiency of commercial prerinse spray valves. In addition, the Advocates pointed out that a widely used industry standard, ASTM Standard F2324–13, already incorporates spray force measurement, and so a metric accounting for both flow rate and spray force would not cause additional burden to manufacturers listing products to the industry standard. (Advocates, No. 11 at p. 1) However, the Advocates also commented that product classes must be considered to distinguish between commercial prerinse spray valves and DOE could consider using spray force as one way to delineate separate product classes. (Advocates, No. 11 at p. 2)

A joint comment submitted by Pacific Gas and Electric Company (PG&E), Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (CA IOUs) urged DOE to consider a metric or a product classification structure that addresses product performance in addition to water consumption. The CA IOUs stated that if a single metric does not capture both performance and water consumption, the standard should be structured to preserve the primary function of the product while addressing water efficiency. (CA IOUs, No. 14 at p. 1)

The CA IOUs also urged DOE to consider user satisfaction when considering the metric, as some field surveys have shown that users that are dissatisfied with efficient commercial prerinse spray valves will substitute them with those that likely increase overall water consumption. Therefore, CA IOUs suggested either incorporating spray force into the metric, or alternatively, using spray force to establish product classes as a way to account for differentiating products. (CA IOUs, No. 14 at p. 1)

In terms of considering cleanability in the metric, the Advocates commented that they opposed using gallons per

[22] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to amend energy conservation standards for commercial prerinse spray valves. (Docket No. EERE–2014–BT–STD–0027, which is maintained at *www.regulations.gov*) This particular notation refers to a comment: (1) submitted by T&S Brass; (2) appearing in the Public Meeting Transcript, which is document number 6 of the docket; and (3) appearing on page 30 of that document.

[23] Information on the WaterSense program for commercial prerinse spray valves is available at *www.epa.gov/WaterSense/products/prsv.html.*

plate washed as a metric because of concerns about efficacy and replicability of cleanability testing. (Advocates, No. 11 at p. 1) CA IOUs also suggested that DOE consider not using the cleanability test given the problems with repeatability and little correlation to user satisfaction. (CA IOUs, No. 14 at p. 2) Additionally, AWE commented that the cleanability test was an unreliable indicator of top-performing products and was not easily repeatable in laboratories across North America. (AWE, No. 8 at p. 1)

Although the purpose of the rulemaking is to achieve water savings, DOE recognizes that the utility of commercial prerinse spray valves must also be ensured. DOE agrees with interested parties that there are specific applications for different commercial prerinse spray valves, and to preserve utility, another measure besides flow rate must be considered in the analysis. There was a consensus among interested parties not to include cleanability in the test method metric because of the issues regarding repeatability of test results. Additionally, interested parties stated that cleanability had little correlation to performance and user satisfaction. Therefore, DOE did not use cleanability in the analysis.

However, a majority of the interested parties supported including spray force in the analysis. Whereas some stakeholders suggested incorporating spray force as part of the water consumption metric, others commented that spray force can also be used as a characteristic to distinguish product classes. Based on the comments received, DOE proposes to retain flow rate (in gpm) as the efficiency metric, and to incorporate spray force as a characteristic to distinguish product classes. Because the industry currently uses flow rate as the efficiency metric, DOE will continue using this industry-accepted metric. However, to ensure that utility of the commercial prerinse spray valves is maintained, DOE proposes to use spray force as a characteristic to establish product classes. The following section provides further discussion on incorporating spray force as a characteristic to differentiate product classes.

3. Product Classes

As stated previously, all commercial prerinse spray valves are included in a single product class. In the 2014 Framework document, DOE also considered whether to establish separate product classes based on the statutory criteria in 42 U.S.C. 6295(q), and requested comments from interested parties.

The Advocates stated that separate product classes should be established to distinguish among commercial prerinse spray valves that fit different applications. The Advocates also stated that DOE should consider establishing product classes for commercial prerinse spray valves that would distinguish between valves designed and marketed for light duty, standard duty, and heavy-duty applications. (Advocates, No. 11 at p. 2) The CA IOUs also suggested that DOE should examine what applications do not require a higher flow rate for establishing product classes. (CA IOUs, No. 14 at p. 2)

NAFEM suggested evaluating the impacts of the rule on other applications where commercial prerinse spray valves are currently used. (NAFEM, No. 9 at p. 2) Similarly, T&S Brass commented that the applications of commercial prerinse spray valves could vary from rinsing to cleaning baked-on food, and that the different applications might require different spray forces. T&S Brass stated that it offers a variety of prerinse spray valves that have different design features based on end users' applications. (T&S Brass, Public Meeting Transcript, No. 6 at p. 40) T&S Brass also commented that nozzle design and spray pattern provide specific CPSV applications and performance and that consumers choose a commercial prerinse spray valve based on application by trying various designs and determining which commercial prerinse spray valve works best for their specified application. (T&S, No. 12 at p. 4) Additionally, T&S Brass commented that CPSV efficiency depends on water pressure, water temperature, duration, flow rate, spray patterns, and other factors, and that the end-user application will dictate several of these variables. (T&S, No. 12 at p. 6)

DOE agrees with interested parties that there are different applications of commercial prerinse spray valves, such as cleaning baked-on food and light rinsing. Therefore, commercial prerinse spray valves designed for heavy duty cleaning require a higher flow rate in order to achieve satisfactory cleaning performance compared to products designed for light rinsing. Therefore, to preserve consumer utility for all CPSV applications, DOE proposes to establish separate product classes for commercial prerinse spray valves.

To determine what criteria to use to establish the product classes, DOE presented several different CPSV characteristics in the 2014 Framework document and requested input from interested parties. DOE received input on whether cleanability, flow rate, and spray force are criteria that should be used to establish product classes.

a. Cleanability

T&S Brass stated that because cleanability depends on subjective features such as spray pattern, end-user's application, and duration, this characteristic should not be used to establish product classes. (T&S Brass, No. 12 at p. 4) AWE suggested that DOE develop a more viable cleanability test method than that in ASTM F2324–2003 if cleanability is to be used as the defining characteristic. (AWE, No. 8 at p. 2) CA IOUs suggested that DOE consider not using the cleanability test given the problems with repeatability and little correlation to user satisfaction. (CA IOUs, No. 14 at p. 2) T&S Brass commented that ultra-low-flow commercial prerinse spray valves are designed for applications that allow for minimum water consumption, and that cleanability using an ultra-low-flow commercial prerinse spray valve is not applicable to every CPSV application in the foodservice environment. (T&S Brass, No. 12 at p. 4)

Based on these comments, as well as ASTM's update of the F2324 standard (ASTM Standard F2324–13), which replaces the cleanability test with a spray force test, DOE is not considering using cleanability as a characteristic to define product classes.

b. Flow Rate

T&S Brass stated that flow rate is a useful characteristic to define product classes and that spray force is a related parameter that can be altered with the nozzle design. (T&S Brass, Public Meeting Transcript, No. 6 at p. 39) T&S Brass commented that the data for flow rates for commercial prerinse spray valves are available and verifiable because they are based upon consistent test methods of a national test standard. (T&S Brass, No. 12 at p. 3) T&S Brass suggested using three product classes: (1) An ultra low-flow commercial prerinse spray valve with a maximum flow rate of 0.8 gpm; (2) a low-flow commercial prerinse spray valve with flow rates of 0.8 to 1.28 gpm; and (3) a standard commercial prerinse spray valve with flow rates of 1.28 to 1.6 gpm. (T&S Brass, No. 12 at p. 3) T&S Brass stated that the 1.6 gpm class is currently called the EPAct 2005 class. The 1.28 gpm class is based on the WaterSense voluntary standard. The 0.80 gpm class represents a 50 percent reduction of the current DOE standard. (T&S Brass, Public Meeting Transcript, No. 6 at p. 54) However, the Advocates commented that if the metric is not changed from the current gpm, then including flow

rate as a differentiator for product class would be inconsistent. (Advocates, Public Meeting Transcript, No. 6 at p. 38)

Additionally, T&S Brass commented that the performance of the maximum technologically feasible model (max-tech model) should not be evaluated solely based on flow rate. (T&S Brass, Public Meeting Transcript, No. 6 at p. 52) Also, as described in section IV.A.1, interested parties commented that for DOE to maintain the utility of the commercial prerinse spray valves, another measure besides flow rate must be considered in the analysis.

In the 2014 Framework document, DOE noted that it would be difficult to establish product classes based on flow rate if the flow rate efficiency metric was retained. For this rulemaking, DOE proposes to retain flow rate as the efficiency metric for commercial prerinse spray valves. Therefore, DOE is not considering flow rate as a characteristic to establish product classes.

c. Spray Force

As described in section IV.A.1, interested parties recommended that DOE incorporate spray force in the analysis. Additionally, the Northwest Energy Efficiency Alliance (NEEA) recommended that DOE investigate whether spray force and flow rate are directly proportional, and to investigate whether spray force is a good characteristic to predict the performance of a commercial prerinse spray valve. (NEEA, No. 13 at p. 2)

DOE investigated whether any relationship exists between spray force and flow rate. DOE tested multiple spray valves for both flow rate and spray force using the ASTM Standard F2324–13 test procedure. The test results showed a direct linear relationship between flow rate and spray force, such that higher flow rate corresponds to higher spray force. Additionally, DOE found literature online that supported the linear relationship between spray force and flow rate.[24] Chapter 3 of the NOPR TSD provides further discussion on this relationship.

Multiple interested parties also recommended the use of spray force to establish product classes. The Advocates suggested that spray force might be a suitable criterion to create product classes. (Advocates, No. 11 at p. 2) T&S Brass commented that there are several applications of commercial prerinse spray valves, and all might require different spray forces. (T&S Brass, Public Meeting Transcript, No. 6 at p. 39) AWE stated that spray force is a useful characteristic that could be used to define product classes. (AWE, No. 8 at p. 2) CA IOUs suggested using spray force to establish product classes as a way to account for differentiating products.

However, NEEA stated that establishing product classes based on spray force could overlook cleaning effectiveness. It stated that a solid water jet and pattern jet could have the same flow rate and spray force, but that the pattern jet would clean better than a solid jet, despite both having the same spray force. (NEEA, No. 13 at p. 2)

A WaterSense field study found that low water pressure, or spray force, is a source of user dissatisfaction. WaterSense evaluated 14 commercial prerinse spray valve models and collected 56 consumer satisfaction reviews, of which 9 were unsatisfactory. Seven of the nine unsatisfactory scores were attributed, among other factors, to the water pressure, or the user-perceived force of the spray.[25]

Based on all comments from interested parties, DOE recognizes that spray force is an important criterion for characterizing consumer utility and is directly correlated with flow rate. Therefore, DOE is proposing to use spray force as the criterion to establish product classes. The 2015 CPSV test procedure NOPR proposes to incorporate by reference ASTM Standard F2324–13, which includes a test method for measuring spray force.

DOE is proposing three product classes based on ranges of spray force: (1) light-duty (less than or equal to 5 ozf), (2) standard-duty (greater than 5 ozf but less than or equal to 8 ozf), and (3) heavy-duty (greater than than 8 ozf). The light-duty equipment class would be suitable for light rinsing purposes, the standard-duty product class would be suitable to clean wet foods, and the heavy-duty product class would be suitable to clean baked-on foods. DOE testing of commercial prerinse spray valves provided clear indication of three clusters of commercial prerinse spray valves within these spray force ranges. Chapter 3 of the NOPR TSD provides a detailed description of the product classes that DOE is proposing in this rulemaking.

d. Impact of Product Classes on Compliance, Certification and Enforcement

The procedures required for certification, determination, and enforcement of compliance of covered products with the applicable conservation standards are set forth in 10 CFR 429. The sampling plan and certification requirements for commercial prerinse spray valves are dictated in 10 CFR 429.51. DOE received comments from interested parties regarding the impact of product classes on product compliance, certification, and enforcement.

T&S Brass commented that the impact of assigning product classes should be considered with regard to the regulation and certification process. T&S Brass seeks clarification on how commercial prerinse spray valves will be certified (*e.g.,* through accredited third parties) in the future, if product classes will create more burden on manufacturers, and if it will be an additional requirement besides WaterSense certification. (T&S Brass, No. 12 at p. 8) T&S Brass also commented that there is a general lack of enforcement for manufacturers to file with DOE and that many imported products do not follow the federal regulations. (T&S, No. 12 at p. 8)

As described in this NOPR, DOE proposes to designate product classes based on ranges of spray force. In the concurrent 2015 CPSV test procedure NOPR, DOE is proposing that spray force be tested for each spray pattern. Therefore, DOE proposes to revise the certification reporting requirements under 10 CFR 429.51(b)(2) to include reporting the average spray force in ozf, in addition to reporting the average flow rate. The reported spray force will determine which product class applies to each certified basic model. As DOE understands that spray force is already a widely accepted and measured characteristic of commercial prerinse spray valves, DOE believes that adding the reporting requirement for spray force will not create significant additional burden for CPSV manufacturers.

DOE further notes that the WaterSense prerinse spray valve program is a voluntary program administered by EPA, and DOE's reporting and certification requirements for commercial prerinse spray valves would be separate from the requirements of the WaterSense program.

The Advocates noted that ASTM Standard F2324–13, which is being incorporated by reference in the concurrent 2015 CPSV test procedure

[24] Spraying Systems Co., ''Optimizing Your Spray System'' (2009) (Available at: *www.spray.com/Literature_PDFs/TM410A_Optimizing_Your_Spray_System.pdf);* PNR America, ''Some Uses of Spray Nozzles'' (Available at: *http://www.pnramerica.com/pdfs/p2_6.pdf*).

[25] EPA WaterSense, *Prerinse Spray Valves Field Study Report,* at 24–25 (Mar. 31, 2011) (Available at: *www.epa.gov/watersense/docs/final_epa_prsv_study_report_033111v2_508.pdf*).

NOPR (80 FR 35874), already incorporates spray force measurement, and so accounting for both flow rate and spray force would not cause additional burden to manufacturers listing products to the industry standard. (Advocates, No. 11 at p. 1) However, the Advocates also noted that it would be challenging to administer the separate product classes when commercial prerinse spray valves in a commercial kitchen are interchangeable, as many users have both heavy-duty and light-duty cleaning to perform. (Advocates, No. 11 at p. 2) The Advocates cautioned that enforcement issues should also be considered when considering spray force. (Advocates, No. 11 at p. 2)

While DOE administers the certification, determination, and enforcement of compliance of covered products, DOE does not administer the end-use of the covered products by the consumers. Under DOE enforcement activities, conservation standards cases deal with manufacturers that have distributed products in the U.S. that DOE has found do not meet the required energy standards. Compliance certification cases deal with manufacturers that either have not certified that the products that they manufacture and distribute in the U.S. have been tested and meet the applicable energy conservation standards or have submitted invalid compliance certifications. With respect to products certified to EPA's ENERGY STAR program, DOE refers to the EPA any products that DOE tests that do not meet the ENERGY STAR specification. Any complaints regarding non-compliant products can be sent to: *energyefficiencyenforcement@hq.doe.gov*.

4. Technology Assessment

In the technology assessment, DOE identifies technology options that may decrease CPSV water consumption. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. In the 2014 Framework Document, DOE suggested an initial list of technology options that it would consider, which included the following:

- Addition of a flow control insert;
- Smaller nozzle tip openings to increase pressure;
- Incorporation of additional components including, but not limited to backflow preventers, additional valves, or hoses; and
- Specially designed spray patterns, such as the following: fan spray pattern (single nozzle with a hollow cone stream); solid stream pattern (single nozzle with single solid jet stream); triple-action spray pattern (three nozzles with solid jet streams); knife-like spray pattern (single nozzle with a flat stream); and rose spray pattern (multiple nozzles resembling a common showerhead).

DOE received several comments regarding the feasibility and impact of the technology options identified in the 2014 Framework document, which are discussed in the screening and engineering analyses in section IV.B and section IV.C, respectively. T&S Brass commented that there should not be too many design restrictions, as commercial prerinse spray valves are used in different applications, and, based on the application, the incorporation of certain design options might be required. (T&S Brass, Public Meeting Transcript, No. 6 at p. 44) T&S Brass also commented that the rulemaking should not stifle innovation. *Id.* AWE recommended that DOE not be design-restrictive, but focus on cleaning performance, water consumption, and durability of commercial prerinse spray valves for the rulemaking. (AWE, No. 8 at p. 2)

DOE notes that the proposed standard is a performance-based standard, not a design-based standard.

After further research regarding the potential technology options identified in the 2014 Framework document, DOE determined that several of them do not affect CPSV efficiency and thus are not considered to be technology options. The following subsections provide background on these product features that DOE determined had no impact on CPSV efficiency. The technology options that do affect CPSV efficiency are discussed further in section IV.B.

1. Backflow Preventers

Backflow preventers prevent reverse flow of water. They are mainly used in plumbing devices to protect water supplies from contamination or pollution. DOE did not identify any means by which incorporating a backflow preventers into a commercial prerinse spray valve could improve its efficiency by limiting the water flow rate.

2. Specially Designed Spray Patterns

In the 2014 Framework document, DOE identified five different spray patterns that are incorporated in commercial prerinse spray valves. DOE performed several tests on various CPSV units with different spray patterns using the ASTM Standard F2324–13 test procedure. While the units provided different flow rate and spray force results, DOE research showed no direct correlation between the type of spray pattern and flow rate. Hence, DOE found no indication that a different spray pattern can be used to reduce water consumption. Additionally, T&S Brass commented that different nozzle designs and spray patterns have been developed to meet the requirements for specific CPSV applications. (T&S Brass, No. 12 at p. 4) Hence, the type of spray pattern is more relevant to a specific CPSV application, rather than being a potential design option to reduce water consumption in commercial prerinse spray valves.

DOE did, however, identify additional CPSV technology options beyond those in the 2014 Framework document which could improve CPSV efficiency. The additional technology options analyzed include spray hole eccentricity and orifice plate nozzle geometry, and are discussed further in the section IV.B.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further. 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b)

In response to the technology options presented in the 2014 Framework document, T&S Brass stated that design and technology aspects to improve

CPSV performance are considered proprietary information by manufacturers. (T&S Brass, No. 12 at p. 5) The Natural Resources Defense Council (NRDC) asked whether the spray patterns and associated nozzles used in the engineering analysis would be non-proprietary options. (NRDC, Public Meeting Transcript, No. 6 at p. 46).

In the engineering and economic analyses, DOE considered all design options that are commercially available or present in a working prototype, including proprietary designs that meet the screening criteria. DOE will consider a proprietary design, however, only if it does not represent a unique path to a given efficiency level. If the proprietary design is the only approach available to achieve a given efficiency level, then DOE will eliminate that efficiency level from further analysis. However, if a given energy efficiency level can be achieved by a number of design approaches, including a proprietary design, DOE will examine the given efficiency level, despite the proprietary nature of that one design.

Additionally, NAFEM stated that DOE's suggested design options in the 2014 Framework document fail to satisfy the criteria as specified in 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii) through (iv). (NAFEM, No. 9 at p. 2) Sections 4(a)4(ii) through (iv) define three of the four screening criteria described previously, which are: Practicability to manufacture, install and service; adverse impacts on product or equipment utility or availability; and adverse impacts on health or safety. The technology options presented in the 2014 Framework document had not been screened using the four factors discussed above. For the analysis in this notice, DOE evaluated the technology options being considered in the engineering analysis based on the four screening criteria. While a majority of the technology options were not considered in the analysis because they failed to satisfy the screening criteria, there are several technology options that DOE believes satisfy the screening criteria, which are discussed in the following sections. Those technology options not screened out by the four criteria are called ''design options'' and are considered in the engineering analysis as possible methods of improving efficiency. The following sections describe which technology options were screened out, and which were included as design options.

1. Addition of Flow Control Insert

A flow control insert is a component that can be installed within certain plumbing products to limit the amount of water that flows out of the product. Several faucets and showerheads on the market use flow control inserts to reduce water consumption. Therefore, a flow control insert could also be used in other water products, like commercial prerinse spray valves, to control flow. However, T&S Brass commented that the addition of a flow control insert should not be considered as a design option. T&S reports that a flow control insert would hinder CPSV performance, and can often be physically removed by the end user. (T&S Brass, No. 12 at p. 5) Additionally, T&S Brass mentioned that the nozzle itself is what regulates the flow rate in commercial prerinse spray valves. (T&S Brass, No. 12 at p. 5)

Based on research, DOE did not identify any commercial prerinse spray valves on the market that use flow control inserts to regulate water flow. Therefore, because flow control inserts are not incorporated in commercially available products or working prototypes, DOE has screened out flow control inserts from its analysis because they are not technologically feasible.

2. Smaller Spray Hole Area

The spray hole(s) are located at the exterior of the commercial prerinse spray valve and allow water to flow out of the nozzle. The total spray hole area is the sum of all the areas of the individual spray holes. DOE determined that the flow rate and nozzle spray hole area are directly related. Additional technical details regarding this relationship are provided in chapter 5 of the TSD.

Given its relationship to flow rate, DOE identified nozzle spray hole area as an important factor to consider in the engineering analysis. Additionally, reducing the spray hole area is a relatively simple design change that satisfies the 4 screening criteria discussed above: (1) It is technologically feasible; (2) it would be practicable to manufacture, install, and service; (3) it would not have adverse impacts on product utility or availability; [26] and (4) it would not have adverse impacts on health and safety. Therefore, DOE will consider smaller nozzle tip openings, or a smaller nozzle spray hole area, as a design option in the engineering analysis.

3. Aerators

An aerator is a device that can be used to mix air with water, to reduce the flow of water from the device without reducing the water pressure. DOE is aware of only one commercial prerinse spray valve that incorporates an aerator. DOE tested this unit to determine how the aerator reduces water consumption. DOE testing indicated that the performance of this aerated unit differed substantially from the more common non-aerated units: It exhibited a very low spray force, and did not demonstrate the same linear relationship between flow rate and spray force that is typical of most other commercial prerinse spray valves that DOE tested. At the present time, DOE does not have enough information to determine (1) whether the addition of an aerator represents a technologically feasible design option for improving CPSV efficiency, or (2) whether aerators can be applied more generally to other CPSV designs. Therefore, DOE is tentatively screening out aerators from the analysis. DOE requests comment about its approach to screen out aerators in section V.E.14.

4. Additional Valves

Plumbing fixtures often use globe valves and butterfly valves to regulate water flow. Globe valves are comprised of a movable disk-like element and a stationary ring seated in a generally spherical body. The most common application of a globe valve is in a standard water faucet, such that when the handle is turned, a disc is lowered or raised. Butterfly valves regulate flow by means of a disc that rotates on an axis across the diameter of a pipe. Based on DOE's research to date, however, there are no commercially available products or working prototypes of commercial prerinse spray valves that use these additional valves. Additionally, T&S Brass also commented that the incorporation of additional components, such as backflow preventers, additional valves, or hoses, should not be considered as a design option because they are not necessarily aspects incorporated within the commercial prerinse spray valve itself. (T&S Brass, No. 12 at p. 5). DOE considers any component separate from the commercial prerinse spray valve to not be part of the covered product, and therefore not subject to evaluation as a design option. For these reasons, DOE has screened out the incorporation of additional valves from its analysis.

5. Changing Spray Hole Shape

DOE found evidence that spray hole shape affects flow rate. DOE found that commercial prerinse spray valves with circular holes have higher flow rates than commercial prerinse spray valves

[26] Although smaller spray hole area would result in lower flow rates and thus a lower amount of force, DOE's proposed revised product class structure would preserve product utility for heavy-duty applications.

with oval-shaped spray holes, if all other design elements are identical. Additionally, changing spray hole shape is a design change that satisfies the 4 screening criteria discussed above: (1) It is technologically feasible; (2) it would be practicable to manufacture, install, and service; (3) it would not have adverse impacts on product utility or availability;[27] and (4) it would not have adverse impacts on health and safety. Therefore, DOE will consider spray hole shape as a design option in the engineering analysis. Chapter 5 of the TSD provides further details on spray hole shape.

6. Venturi Meter to Orifice Plate Nozzle Geometries

DOE has observed that the nozzle geometry affects the flow rate of commercial prerinse spray valves. Based on DOE testing, reverse-engineering teardowns and information available in the literature, DOE has determined that a ''venturi meter'' geometry allows water to pass through the nozzle more easily than an ''orifice plate'' geometry. Therefore, if all other design elements are identical, commercial prerinse spray valves with an orifice plate geometry have a lower flow rate than commercial prerinse spray valves with a venture meter geometry. Additionally, changing spray nozzle geometry is a design change that satisfies the 4 screening criteria discussed above: (1) It is technologically feasible; (2) it would be practicable to manufacture, install, and service; (3) it would not have adverse impacts on product utility or availability;[28] and (4) it would not have adverse impacts on health and safety. Therefore, DOE will consider spray nozzle geometry as a design option in the engineering analysis. Chapter 5 of the TSD provides a more detailed discussion on this topic.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost (MPC) and improved CPSV efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option, (2) efficiency level, or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products.

For this analysis, DOE structured its engineering analysis for commercial prerinse spray valves using a combination of the design-option approach and the reverse-engineering approach. The analysis is performed in terms of incremental decreases in water consumption due to the implementation of selected design options, while the estimated MPCs for each successive design option are based on product teardowns and a bottom-up manufacturing cost assessment. Using this hybrid approach, DOE developed the relationship between MPC and CPSV efficiency.

Chapter 5 of the NOPR TSD discusses the baseline efficiencies for each product class (in terms of flow rate), the design options DOE considered, the methodology used to develop manufacturing production costs, and the cost-efficiency curves. The LCC and PBP analysis uses the cost-efficiency relationships developed in the engineering analysis.

1. Engineering Approach

For each of the three proposed product classes, DOE selected a baseline efficiency (in terms of flow rate) as a reference point from which to measure changes resulting from each design option. DOE then developed separate cost-efficiency relationships for each product class analyzed. The following is a summary of the method DOE used to determine the cost-efficiency relationship for commercial prerinse spray valves:

(1) Perform flow rate and spray force tests on a representative sample of commercial prerinse spray valves in every product class.

(2) Develop a detailed BOM for the tested commercial prerinse spray valves through product teardowns, and construct a commercial prerinse spray valve cost model.

(3) Use the test data and cost model to calculate the incremental increase in efficiency (*i.e.,* decrease in flow rate) and cost increase of adding specific design options to a baseline model.

In the 2014 Framework document, DOE presented plans for its engineering analysis and sought comment on its approach to calculating the cost-efficiency relationship for commercial prerinse spray valves. T&S Brass stated that the range of efficiency levels should be determined based on the performance of commercial prerinse spray valves evaluated per ASTM Standard F2324–13. (T&S Brass, No. 12 at p. 5) DOE agrees that ASTM Standard F2324–13 reflects the latest changes in the industry and conducted all testing in support of this rulemaking using ASTM Standard F2324–13.

The CA IOUs recommended that DOE look at DOE's CCMS and the CEC appliance databases for available product data. The CA IOUs also provided separate charts that showed the range of flow rates from these databases; the ranges reported were from 0.65 to 1.48 gpm. (CA IOUs, No. 14 at p. 3) For the analysis, DOE used CCMS and CEC databases to incorporate product data for the analysis. Additionally, DOE looked at the EPA WaterSense database and the Food Service Technology Center (FSTC) commercial prerinse spray valves testing results to determine the flow rates and spray forces.

2. Product Classes

DOE is proposing three product classes, defined by spray force ranges, as shown in Table IV.1.

TABLE IV.1—PRODUCT CLASSES DEFINITIONS

Product class	Spray force range
Light-duty	≤ 5 ozf.
Standard-duty	> 5 ozf and ≤ 8 ozf.
Heavy-duty	> 8 ozf.

Chapter 3 of the NOPR TSD includes a detailed discussion regarding how the product classes were determined.

3. Baseline and Max-Tech Models

To analyze technology options for energy efficiency improvements, DOE defined a baseline model for each commercial prerinse spray valve product class. Typically, the baseline model is a model that just meets current energy conservation standards.

For the heavy-duty product class (spray force greater than 8 ozf), DOE determined that the baseline flow rate is the current commercial prerinse spray valve energy conservation standard of 1.6 gpm. For the standard-duty and

[27] Although smaller spray hole area would result in lower flow rates and thus a lower amount of force, DOE's proposed revised product class structure would preserve product utility for heavy-duty applications.

[28] Although an orifice plate geometry would result in lower flow rates and thus a lower amount of force, DOE's proposed revised product class structure would preserve product utility for heavy-duty applications.

light-duty product classes, DOE established baseline flow rates that correspond to upper spray force bounds of these two product classes. DOE determined these baseline flow rates using the linear relationship between flow rate and spray force. DOE determined a best-fit linear equation that related flow rate and spray force using the test results for all the commercial prerinse spray valves that DOE tested. DOE then calculated the flow rates that corresponded to the spray force bounds for the standard-duty and light-duty product classes using the best fit linear equation. Chapter 5 of the NOPR TSD provides more detail on the flow rate and spray force relationship.

T&S Brass cautioned against picking the highest efficiency level (max-tech) solely based on flow rate. T&S Brass commented that there are products on the market with a low flow rate that have an unsatisfactory user rating. T&S Brass suggested also looking at spray force when determining the max-tech model. According to T&S Brass, the current definition of the max-tech model solely based on flow rate may work in certain applications, but may work poorly for a standard market application. (T&S Brass, Public Meeting Transcript, No. 6 at p. 51) Additionally, T&S Brass also noted that the max-tech model in each product class may not adequately perform for all commercial foodservice applications. (T&S Brass, No. 12 at p. 6)

As described above, DOE proposes three product classes, defined by spray force ranges, which correspond to three major categories of CPSV usage (*i.e.* light-duty, standard-duty, and heavy-duty). Separating commercial prerinse spray valves into three product classes will ensure that consumer utility is maintained within each product class. DOE believes that the max-tech level selected for each product class would not reduce consumer utility for the applications associated with each spray force range.

To develop the relationships between flow rate and the design options for commercial prerinse spray valves, DOE used publicly available data, including data from government databases, manufacturer catalogs and Web sites, and selected product testing for commercial prerinse spray valves. The engineering analysis focused on identifying and evaluating commercially available prerinse spray valves that incorporate design options that reduce flow rate. The analysis also identified the lowest flow rate that is commercially available within each product class (*i.e.,* the max-tech model).

Additionally, DOE found that the spray nozzle geometry is a variable that affects flow rate. The nozzle geometry is expressed in terms of a discharge coefficient. DOE calculated the discharge coefficient for the max-tech model in each product class and assumed a constant discharge coefficient for each efficiency level within that class. DOE requests comments on whether this approach is appropriate.

Chapter 5 of the NOPR TSD includes details on the baseline flow rates and max-tech flow rates considered as part of the engineering analysis.

4. Manufacturing Cost Analysis

DOE estimated the manufacturing costs using a reverse-engineering approach, which involves a bottom-up manufacturing cost assessment based on a detailed BOM derived from teardowns of the product being analyzed. The detailed BOM includes labor costs, depreciation costs, utilities, maintenance, tax, and insurance costs, in addition to the individual component costs. These manufacturing costs are developed to be an industry average and do not take into account how efficiently a particular manufacturing facility operates.

To develop the relationship between cost and performance for commercial prerinse spray valves, DOE used a reverse-engineering analysis, or teardown analysis. DOE purchased off-the-shelf commercial prerinse spray valves available on the market and dismantled them component by component to determine what technologies and designs manufacturers use to decrease commercial prerinse spray valve flow rate. DOE then used independent costing methods, along with component-supplier data, to estimate the costs of the components.

T&S Brass stated that materials and processes for metallic, plastic, and rubber parts should be taken into consideration in the reverse-engineering process. (T&S Brass, No. 12 at p. 5) T&S Brass also commented that the costs for incremental efficiency improvements of existing commercial prerinse spray valve are different among manufacturers, or even among models from the same manufacturer. Therefore, the costs to improve efficiency depend on the design of commercial prerinse spray valve. (T&S Brass, No. 12 at p. 6)

DOE derived detailed manufacturing cost estimate data based on its reverse engineering analysis, which included the cost of the product components, labor, purchased parts and materials, and investment.

DOE tested three series of commercial prerinse spray valves from three manufacturers. Through testing, DOE found that the flow rates of the units within each series were different. However, based on the reverse-engineering analysis, the manufacturing costs for the units within each series were the same. Therefore, DOE concluded that there is no manufacturing cost difference for incremental efficiency improvements between models within the same series from the same manufacturer.

DOE also tested and performed a teardown analysis on commercial prerinse spray valves from additional manufacturers. These commercial prerinse spray valves represented a range of baseline to max-tech units. The testing and teardown results indicated that the manufacturing costs between different units from different manufacturers can vary based on the type of material, amount of material, and/or process used. However, DOE determined that these factors do not affect the efficiency of a commercial prerinse spray valve. Therefore, DOE did not include these cost differences in the engineering analysis. Chapter 5 of the NOPR TSD provides further details on the teardown analysis, component costs, and costs that were developed as part of the cost-efficiency curves.

D. Markups Analysis

The purpose of the markups analysis is to translate the MPC derived from the engineering analysis into the final consumer purchase price by applying the appropriate markups. The first step in this process is converting the MPC into the MSP by applying the manufacturer markup. The manufacturer markup includes sales, general and administrative, research and development, other corporate expenses, and profit. As described further in chapter 6 of the TSD, the manufacturer markup of 1.30 was calculated as the market share weighted average value for the industry. DOE developed this manufacturer markup by examining several major CPSV manufacturers' gross margin information from annual reports and Securities and Exchange Commission 10–K reports. Because the 10–K reports do not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of equipment offerings, and does not necessarily represent the manufacturer markup of the subsidiary. Both the MPC and the MSP values are used in the MIA.

Next, DOE uses manufacturer-to-consumer markups to convert the MSP estimates into consumer purchase prices, which are then used in the LCC and PBP analysis, as well as the NIA. Consumer purchase prices are necessary for the baseline efficiency level and all other efficiency levels under consideration.

For the markups analysis, DOE identified the following distribution channels (*i.e.* how the product is distributed from the manufacturer to the consumer):

A. Manufacturer → Final Consumer (Direct Sales)
B. Manufacturer → Authorized Distributor → Final Consumer
C. Manufacturer → Retailer → Final Consumer
D. Manufacturer → Service Company → Final Consumer

During the Framework public meeting and public comment period, three comments were received with regard to distribution channels. T&S Brass commented that the trade associations did not maintain information on the percentage allocations among the various distribution channels. T&S Brass stated that such information was proprietary. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 71–72) T&S Brass also noted that there were numerous combinations of entities making up the potential distribution channels, and the three listed by DOE (A through C, as listed above) are only but a subset of the potential channels. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 70–71) Additionally, AWE commented that the dominant CPSV sales outlet is made up of service companies providing on-demand, on-site maintenance and other services to food service operators. (AWE, No. 8 at p. 2) As such, DOE added a fourth distribution channel (Service Company), in addition to the three discussed in the Framework document (Direct Sales, Authorized Distributor, and Retail Merchant). Beyond this, DOE did not attempt to incorporate additional channels or investigate combinations of the existing channels, because of a lack of specific information on distribution channels.

In the 2014 Framework document, DOE discussed both baseline and incremental markups. Baseline markups are multipliers that convert the MSP of products at the baseline efficiency level to consumer purchase price. Incremental markups are multipliers that convert the incremental increase in MSP for products at each higher efficiency level (compared to the MSP at the baseline efficiency level) to corresponding incremental increases in the consumer purchase price. In the analysis in this notice, DOE used only baseline markups, as the engineering analysis indicated that there is no price increase with improvements in efficiency for commercial prerinse spray valves. Chapter 6 of the NOPR TSD provides further details on the distribution channels and calculated markups.

E. Energy and Water Use Analysis

The purpose of the energy and water use analysis is to establish the annual energy and water consumption used by the product to assess the associated energy and water savings potential of different product efficiencies. To this end, DOE performed an energy and water use analysis that calculated energy and water use of commercial prerinse spray valves for each product class and efficiency level identified in the engineering analysis. The energy and water use analysis provided the basis for other analyses DOE performed, particularly the LCC and PBP analysis and the NIA.

In the 2014 Framework document, DOE indicated the analysis conducted for the NOPR is intended to capture and estimate water savings as a result of reduced flow rate and the related energy savings as a result of reduced hot water use. DOE calculated the energy and water use by determining the representative daily operating time of the product by major building types that contain commercial kitchens found in the Commercial Building Energy Consumption Survey (CBECS).[29] The daily commercial prerinse spray valve operating time was annualized based on operating schedules for each building type. Water use for each product class was determined by multiplying the annual operating time by the flow rate at an operating pressure of 60 pounds per square inch (psi) for each efficiency level.[30]

Energy use was calculated by multiplying the annual water use in gallons by the energy required to heat each gallon of water to an end-use temperature of 108 °F.[31] Cold water supply temperatures used in this calculation were derived for the nine U.S. census regions based on ambient air temperatures and hot water supply temperature was assumed to be 140 °F based on ASHRAE Standard 12–2000.[32] The proportion of buildings which used natural gas or electricity for water heating found in the CBECS database were multiplied by the energy consumption of each kind of water heater, taking into account the efficiency level of the product, to obtain the total energy consumption of each product class and efficiency level of commercial prerinse spray valves.

In response to the 2014 Framework document, DOE received several comments related to potential data sources for the energy and water use analysis. IAPMO asked whether the rulemaking team had coordinated with DOE's Water, Energy, and Technology team. (IAPMO, Public Meeting Transcript, No. 6 at pp. 77–78) WaterSense asked how DOE planned to collect data on CPSV operation. (WaterSense, Public Meeting Transcript, No. 6 at pp. 78–79) T&S Brass noted that operation data might be available through NAFEM and FSTC. (T&S Brass, Public Meeting Transcript, No. 6 at p. 80) Finally, AWE commented that it had data available on operating time and water temperature from California Urban Water Conservation Council (CUWCC) studies. (AWE, No. 8 at p.3)

In response to these comments, and as discussed above, DOE collected data from several end-use studies that measured operating time of commercial prerinse spray valves in field applications, such as restaurants and cafeteria settings. Data on water temperature measured in the field studies were also utilized by DOE to determine the hot water and end-use temperature.

Additionally, T&S Brass commented that operational patterns varied widely across applications that use CPSV products. The different operational patterns across applications are a result of such factors as the volume of dishwashing or ware washing (*i.e.,* number of pieces) requiring prerinsing, the rate at which dishwashing or ware washing needs to be done in order to return the commercial ware back into service, the difficulty in cleaning debris from the commercial ware, and operational patterns for product classes. T&S Brass added that these operational

[29] Survey data available at *www.eia.gov/consumption/commercial/data/2003/index.cfm.*

[30] DOE considered a range of operating pressures in the analysis to account for the variations in water pressure supplied to buildings across the country. Through a sensitivity analysis on the impacts of water pressure on the flow rate of the prerinse spray valve, DOE concluded that 60 psi is a representative water pressure for prerinse spray valves. DOE used flow rates at a water pressure of 60 psi for each efficiency level in the energy and water use analysis, which is further discussed in the energy and water use TSD chapter.

[31] End-use temperature was determined based on a review of several field studies. See chapter 7 of the NOPR TSD for a list of the field studies reviewed.

[32] *ASHRAE Standard 12–2000: Minimizing the Risk of Legionellosis Associated with Building Water Systems,* (February 2000).

patterns will vary in duration of usage, as flow rates change within each application. (T&S Brass, No. 12 at p. 6)

DOE acknowledges comments submitted by T&S Brass regarding varying operational spray patterns and considered the varying operational patterns across applications of commercial prerinse spray valves in the analysis for this notice. As described in further detail in chapter 7 of the NOPR TSD, DOE determined operational time for the product based on operational patterns of distinct building types that house commercial prerinse spray valves, including educational facilities, food retail, healthcare, lodging, and restaurants. Operational patterns taken into consideration for each building category included operating days per week, operating hours per day, and estimated daily number of meals served. DOE assumed the same operating time for different flow rates based on the conclusion of the EPA WaterSense field study that determined the flow rate of a CPSV did not significantly impact the operating time of the unit.[33]

T&S Brass also commented that potential energy savings due to a lower flow rate might be offset by using a higher water temperature that would create water savings, but not energy savings due to the increase in water temperature. (T&S, No. 12 at p. 8)

In regards to the comment submitted by T&S Brass, DOE assumed an end-use temperature of 108 °F based on measured temperatures in field studies for commercial prerinse spray valves of varying flow rates. The field studies demonstrated that the end-use temperature did not significantly vary with flow rate. Therefore, DOE tentatively concludes this temperature is a reasonable representation of the temperature used by the majority of CPSV consumers, regardless of the flow rate of the unit.

In response to the 2014 Framework document, NEEA commented that it had access to the data for utility programs in the Northwest. (NEEA, No. 13 at p. 2)

DOE appreciates the comment from NEEA regarding their access to regional utility program data. In the analysis for this NOPR, DOE utilized field studies and data that approximated national potable water supply temperatures and operational water temperatures.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted the LCC and PBP analysis to evaluate the economic impacts on individual consumers of potential amended energy conservation standards for commercial prerinse spray valves. The LCC is the total consumer expense over the life of the product, consisting of purchase and installation costs plus operating costs (expenses for energy and water use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes consumers to recover the potential increased purchase cost (including installation) of more efficient products through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to an estimate of the no-new-standards case product efficiency distribution. The no-new-standards case estimate reflects the market in the absence of amended energy conservation standards, including the market for products that exceeds the current energy conservation standard. In contrast, the PBP is measured relative to the baseline product.

Inputs to the calculation of total installed cost include the cost of the product—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy and water consumption, energy prices and price projections, combined water prices (which include water and wastewater prices) and price projections, repair and maintenance costs, product lifetimes, discount rates. DOE created distributions of values for product lifetime, discount rates, energy and combined water prices, and sales taxes, with probabilities attached to each value to account for their uncertainty and variability.

The computer model DOE used to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and CPSV user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 CPSV users per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new commercial prerinse spray valve in the first year of the analysis period. For this rulemaking, DOE anticipates any amended standards would apply to commercial prerinse spray valves manufactured 3 years after the date on which any final amended standard is published. For this rulemaking, DOE anticipates publication of any final standards in late 2015 and compliance in late 2018. However, for the purposes of this analysis, DOE used 2019 instead of 2018 as the beginning of the analysis period for the LCC and PBP analysis, due to the anticipated compliance date being late in the year 2018.

Table IV.2 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and its appendices of the NOPR TSD.

TABLE IV.2—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MSPs by distribution channel markups and sales tax, as appropriate.
Installation Costs	Baseline installation cost determined with data from U.S. Department of Labor. Assumed no change with efficiency level.
Annual Energy and Water Use	Determined from the energy required to heat a gallon of water used at the prerinse spray valve multiplied by the average annual operating time and flow rate of each product class. Variability: By census region

[33] EPA WaterSense, *Prerinse Spray Valves Field Study Report,* (March 2011) (Available at: *www.epa.gov/watersense/docs/final_epa_prsv_study_report_033111v2_508.pdf.*).

TABLE IV.2—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Energy, Water and Wastewater Prices	Energy: Based on EIA's Form 826 data for 2013. Variability: By State Water: Based on 2012 AWWA Survey. Variability: By State
Energy and Water Price Trends	Energy: Forecasted using *AEO2014* price forecasts. Water: Forecasted using BLS historic water price index information.
Maintenance and Repair Costs	Assumed no change with efficiency level.
Product Lifetime	DOE assumed an average lifetime of 5 years. Variability: Characterized using modified Weibull probability distributions.
Discount Rates	Estimated using the average cost of capital to commercial prerinse spray valve consumers. Cost of capital was found using information from the federal reserve and from Damodaran online data.
First Year of Analysis Period	2019

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MSPs developed in the engineering analysis by the distribution channel markups described in section IV.D (along with sales taxes). As stated earlier in this notice, DOE used baseline markups, but did not apply incremental markups, because the engineering analysis indicated that there is no price increase with improvements in efficiency for commercial prerinse spray valves. Product costs are assumed to remain constant over the analysis period.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE received the following comments to the 2014 Framework document regarding installation costs of commercial prerinse spray valves.

T&S Brass commented that installation costs typically did not increase with higher-efficiency prerinse spray valves due to this process being a simple swap out. Under certain circumstances, depending on the manufacturer, additional materials may be necessary. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 83–85) T&S Brass also commented that depending upon the manufacturer, dealer, or installer, the initial installation costs of new products may or may not change for higher-efficiency models. The valve is typically a pre-assembled component of a prerinse unit installed into new facilities, but is usually provided separately for pre-existing installations. For retrofit applications where an existing valve is replaced with a higher-efficiency valve, the cost may increase depending upon the degree of design change required to manufacture the commercial valve to the higher-efficiency requirement. This may require additional components, or revised upstream components, that are needed for proper installation and/or performance. This again is dependent upon the various manufacturers, dealers, or installers. (T&S Brass, No. 12 at p. 7)

DOE has not received any specific data or other comments regarding installation cost as a function of product efficiency. Given the relatively simple nature of installing spray valves, and because there are no substantial differences in size, shape, or function of more efficient units relative to baseline efficiency units, DOE assumes that installation costs for more efficient units are the same as the costs for baseline products.

3. Annual Energy and Water Consumption

Chapter 7 of the NOPR TSD details DOE's analysis of CPSV annual energy and water use at various efficiency levels. For each sampled building type, DOE determined the energy and water consumption for a commercial prerinse spray valve at different efficiency levels using the approach described in section IV.E of this notice.

4. Energy Prices

DOE derived energy prices from the EIA regional average energy price data for the commercial sectors. DOE used projections of these energy prices for commercial consumers to estimate future energy prices in the LCC and PBP analysis. EIA's *Annual Energy Outlook* (*AEO2014*) was used as the default source of projections for future energy prices.

DOE developed estimates of commercial electricity and natural gas prices for each state and the District of Columbia (DC). DOE derived average regional energy prices from data that are published annually based on EIA Form 826. DOE then used EIA's *AEO2014* price projections to estimate commercial electricity and natural gas prices in future years. EIA's *AEO2014* price projections have an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2030 to 2040. DOE assumed that 100 percent of installations were in commercial locations. DOE did not receive any comments to the 2014 Framework document regarding its method for determining energy prices.

5. Water and Wastewater Prices

In the 2014 Framework document, DOE indicated that it would determine marginal water and wastewater rates in the U.S. that would be used in the LCC and PBP analysis, as well as the NIA. It further stated that it would investigate American Water Works Association's (AWWA's) biannual water and wastewater rate survey when modeling water and wastewater marginal pricing and projected future rate escalations. DOE received the following comments regarding the determination of the appropriate water prices for applicable analyses.

T&S Brass recommended using AWWA as a source for water prices. (T&S Brass, Public Meeting Transcript, No. 6 at p. 88) T&S Brass also commented that it recognized the relationship between wastewater discharge and water usage. The impact of wastewater discharge is dependent upon municipal wastewater charges, such as sewer rate. Therefore, similar to the costs of municipal water, wastewater charges are based upon the location across the nation. (T&S Brass, No. 12 at p. 7) T&S Brass suggested that DOE should contact AWWA to determine marginal water and wastewater rates and methods to break out water and wastewater rates across different pricing segments, such as regionally or by state, as well as future trends in water and wastewater rate escalations. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 94–96)

In response to T&S Brass's comments, and consistent with the 2014 Framework document, DOE obtained

data on water and wastewater prices from the 2012 AWWA surveys for this notice. For each state and DC, DOE combined all individual utility observations within the state to develop one value for water and wastewater service. Because water and wastewater charges are frequently tied to the same metered commodity values, DOE combined the prices for water and wastewater into one total dollar per thousand gallons figure. This figure is referred to as the combined water price. DOE used the consumer price index (CPI) data for water related consumption (1970–2013) in developing a real growth rate for combined water price forecasts.

Chapter 8 of the NOPR TSD provides more detail about DOE's approach to developing water and wastewater prices.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components that have failed in the product; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no changes, or only minor changes, in repair and maintenance costs compared to baseline efficiency product.

In the 2014 Framework document, DOE requested information as to whether maintenance and repair costs are a function of efficiency level and product class. T&S Brass commented that determining whether repair costs may change for more efficient products, or whether commercial prerinse spray valves were typically replaced upon failure or repaired, depends on how the manufacturer markets their products. Some manufacturers and distributors place a premium on their more efficient products. Others view it as doing a service to the environment and to consumers by offering the same price. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 94–96). T&S Brass also commented that some manufacturers offer repair kits. Some manufacturers view commercial prerinse spray valves as ''throwaway'' items, but T&S Brass does not, and stated that it could document that some of its original spray valves had been in use for over 60 years. (T&S Brass, Public Meeting Transcript, No. 6 at p. 86) Additionally T&S Brass commented that although its products can last longer than 5 years, end users decide whether to replace the entire unit or repair the unit in the field. (T&S Brass, Public Meeting Transcript, No. 6 at pp. 96–97) T&S Brass also stated that it offers an array of repair kits for commercial prerinse spray valves. (T&S Brass, No. 12 at pp. 7–8)

DOE acknowledges T&S Brass's comments. But, based on the lack of data regarding repair rates in the industry, DOE assumed that consumers would replace the commercial prerinse spray valve upon failure rather than repairing the product. DOE assumed that there are no changes in maintenance or repair costs between different efficiency levels.

7. Product Lifetime

Because product lifetime varies depending on utilization and other factors, DOE developed a distribution of product lifetimes. In the 2014 Framework document, DOE assumed an average CPSV lifetime of 5 years.

T&S Brass commented that water temperature and pressure, as well as frequency and duration of usage, were key considerations when determining the life expectancy of a unit. (T&S Brass, No. 12 at p. 3) T&S Brass also commented that they do not know of a correlation between spray valve usage and life expectancy. (T&S Brass, No. 12 at p. 3) T&S Brass pointed out that life-cycle testing for mechanical endurance is a prerequisite for third-party certification of commercial prerinse spray valves. (T&S Brass, No. 12 at p. 3)

DOE did not find sufficient data to support the use of factors such as usage, or water temperature and pressure, as a way to determine the distribution of lifetimes of commercial prerinse spray valves in the analysis for this notice.

T&S Brass commented that lifetime values cannot be accurately quantified because of the range and number of variables, as well as the various end-user applications that must be considered. (T&S, No. 12 at p. 3)

DOE developed a Weibull distribution with an average lifetime of 5 years and a maximum lifetime of 10 years. The use of a lifetime distribution for this analysis helps account for the variability of product lifetimes.

However, NEEA commented that it expected the actual lifetime to be reduced due to an observed 10 percent attrition after 1 year because of events such as businesses closing, the unit being replaced, or rinsing stations being removed in Northwest utility programs. Additionally, NEEA pointed out that SBW Consulting's evaluation report estimated that CPSV lifetimes might be as low as 2 years based on reported sales volume and the estimated population of commercial prerinse spray valves. (NEEA, No. 13 at pp. 1–2)

In consideration of NEEA's comment regarding the lifetime distributions used for commercial prerinse spray valves, in the NOPR analysis DOE modified the Weibull distribution to reflect 10 percent of commercial prerinse spray valves failing within the first year after installation. See chapter 8 of the NOPR TSD for further details on the method and sources DOE used to develop CPSV lifetimes.

8. Discount Rates

In the calculation of LCC, DOE developed discount rates by estimating the average cost of capital to commercial prerinse spray valve consumers. DOE applies discount rates to commercial consumers to estimate the present value of future cash flows derived from a project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. See chapter 8 in the NOPR TSD for further details on the development of consumer discount rates.

9. No-New-Standards Case Efficiency Distribution

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC and PBP analysis considered the projected distribution of product efficiencies that consumers purchase under the no-new-standards case. DOE refers to this distribution of product efficiencies as a no-new-standards case efficiency distribution.

To estimate the no-new-standards case efficiency distribution of commercial prerinse spray valves in 2019 (the first year of the analysis period), DOE relied on data from the Food Service Technology Center and DOE's CCMS Database for commercial prerinse spray valves.[34] Additionally, DOE conducted general internet searches and examined manufacturer literature to understand the characteristics of the spray valves currently offered on the market. DOE assumed that the no-standards case percentages in 2019 would stay the same through the analysis period. The no-standards case efficiency distribution is described in chapter 8 of the NOPR TSD.

The estimated shares for the no-standards case efficiency distribution

[34] The Food Service Technology Center test data for prerinse spray valves is available at *www.fishnick.com/equipment/sprayvalves/*. The DOE compliance certification data for commercial prerinse spray valves is available at *www.regulations.doe.gov/certification-data/*.

for commercial prerinse spray valves are shown in Table IV.3.

TABLE IV.3—COMMERCIAL PRERINSE SPRAY VALVE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2019

Efficiency level	Light duty (% of shipments)	Standard duty (% of shipments)	Heavy duty (% of shipments)
Baseline	15	40	40
1	35	50	50
2	0	0	5
3	50	10	5

10. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline product, through energy and water cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not completely recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed. As explained in the engineering analysis of this notice (IV.C) there are no additional installed costs for more efficient commercial prerinse spray valves, making the PBP zero.

11. Rebuttable-Presumption Payback Period

EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if DOE finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy (and, as applicable, water) savings resulting from the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy and water savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy and combined water price forecast for the year in which compliance with the amended standard would be required. The results are summarized in section V.B.1.c of this notice.

G. Shipments

DOE uses projections of product shipments to calculate the national impacts of potential amended energy conservation standards on energy and water use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on historic economic figures and an analysis of key market drivers for commercial prerinse spray valves. In DOE's shipments model, CPSV shipments are driven by both new construction and stock replacements. The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the existing stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution in-service product is a key input to calculations of both the national energy savings (NES), national water savings, and NPV, because operating costs for any year depend on the age distribution of the stock. DOE also considers the impacts on shipments from changes in product purchase price and operating cost associated with higher efficiency levels.

In the 2014 Framework document, DOE stated its intention to use historical shipment data for commercial prerinse spray valves obtained from trade organization surveys and commercial floor space growth data to characterize CPSV shipments. In response, NEEA recommended including a broader mix of building types beyond just restaurants, such as grocery stores and institutional facilities, to estimate total shipments. (NEEA, No. 13 at p. 1)

In the shipments analysis for this notice, DOE gathered information pertaining to commercial prerinse spray valves for many building types besides just restaurants from the National Restaurant Association, Puget Sound Energy Program, EPA WaterSense Field Study, and other industry reports.

DOE did not receive any shipments data from interested parties in response to the 2014 Framework document. DOE based the retirement function (the time at which the product fails and is replaced) on the probability distribution for product lifetime that was developed in the LCC and PBP analysis. The shipments model assumes that no units are retired below a minimum product lifetime (one year of service) and that all units are retired before exceeding a maximum product lifetime (ten years of service).

In the 2014 Framework document, DOE indicated that it intended to derive standards case shipments projections using the same data used in the development of the base case projections. DOE assumed that any potential amended energy conservation standards for commercial prerinse spray valves would not impact the total volume of shipments over the analysis period. Rather, in response to the proposed standards, product shipments may move from one efficiency level to another, but the total number of units shipped remains the same between the base and standards cases.

DOE determined that a roll-up scenario is most appropriate to establish the distribution of efficiencies for the year that compliance with amended CPSV standards would be required. Under the ''roll-up'' scenario, DOE assumes: (1) Product efficiencies in the no-standards case that do not meet the standard level under consideration would ''roll-up'' to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. The details of DOE's approach to forecast efficiency trends are described in chapter 8 of the NOPR TSD.

The nature of the market for commercial prerinse spray valves makes it possible that consumers may, under examined TSLs and product classes, opt to switch product classes to a commercial prerinse spray valve that consumes more water and energy than their current product. In particular, if current choices of product correspond to consumers' optimal product under

the current regulatory environment, it is probable that some consumers would switch from the standard-duty product class to the heavy-duty product class in response to proposed standards, given the lack of restrictions on doing so. DOE implemented a mechanism in the shipments model to estimate such consumer choices. The economics resulting from product-class switching may result in lower optimal efficiency levels and reduced estimates of water and energy savings, as compared to the case without class switching. A detailed description of DOE's method to model product-class switching is contained in chapter 9 of the NOPR TSD.

H. National Impact Analysis

The NIA assesses the NES, national water savings, and NPV of total consumer costs and savings that would be expected to result from amended standards at specific efficiency levels. DOE calculates the NES, national water savings, and NPV based on projections of annual CPSV shipments, along with the annual energy and water consumption and total installed cost data from the energy and water use analysis, as well as the LCC and PBP analysis. DOE forecasted the energy and water savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of products sold from 2019 through 2048.

DOE evaluates the impacts of new and amended standards by comparing a base-case projection with standards-case projections. The base-case projection characterizes energy and water use and consumer costs for each product class in the absence of new or amended energy conservation standards. For the base-case projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the base-case projection with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy and water savings, and the national consumer costs and savings for each TSL. Chapter 10 of the NOPR TSD describes the models and how to use them; interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical or weighted-average mean values (as opposed to probability distributions) as inputs.

DOE used projections of energy and combined water prices as described in section IV.F.4 and IV.F.5, as well as chapter 8 of the NOPR TSD. As part of the NIA, DOE analyzed scenarios that used inputs from the *AEO2014* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the reference case. NIA results based on these cases are presented in appendix 10A of the NOPR TSD.

Table IV.4 summarizes the inputs and methods DOE used for the NIA analysis. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.4—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
First Year of Analysis Period	2019
No-Standards Case Forecasted Efficiencies.	Efficiency distributions are forecasted based on historical efficiency data.
Standards Case Forecasted Efficiencies	Used a ''roll-up'' scenario.
Annual Energy and Water Consumption per Unit.	Annual weighted-average values are a function of energy and water use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates forecast of future product prices based on historical data.
Annual Energy and Combined Water Cost per Unit.	Annual weighted-average values as a function of the annual energy and water consumption per unit, and energy, and combined water treatment prices.
Energy Prices	*AEO2014* forecasts (to 2040) and extrapolation through 2058.
Energy Site-to-Source Conversion Factors	Varies yearly and is generated by NEMS–BT.
Discount Rate	3 and 7 percent real.
Present Year	Future expenses discounted to 2015, when the NOPR will be published.

1. National Energy and Water Savings

The national energy and water savings analysis involves a comparison of national energy and water consumption of the considered product in each potential standards case (TSL) with consumption in the no-standards case with no amended energy and water conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product unit (by vintage or age) by the unit energy and water consumption (also by vintage). Then, DOE calculated annual NES and national water savings based on the difference in national energy and water consumption for the no-standards case (without amended efficiency standards) and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy, and converted the electricity consumption and savings to primary energy using annual conversion factors derived from the *AEO2014* version of NEMS. Cumulative energy and water savings are the sum of the annual NES and national water savings for each year over the timeframe of the analysis. DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, this quantity includes the energy consumed by power plants to generate delivered (site) electricity.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 proposed statement of policy, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for

its FFC analysis, as well as its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012).

2. Forecasted Efficiency in the No-Standards Case and Standards Cases

A key component of the NIA is the trend in energy efficiency projected for the no-standards case (without new or amended standards) and the standards case. Section IV.F.9 of this notice describes how DOE developed a no-standards case energy efficiency distribution (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the forecast period.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product unit shipped during the forecast period. The operating cost savings are energy and combined water cost savings.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[35] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC and PBP analysis, which are designed to reflect an individual consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by an amended national standard. DOE evaluated impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this rulemaking, DOE analyzed the impacts of the considered standard levels on single entities and limited service establishment end users.

In general, the higher the cost of capital and the lower the cost of energy and water, the more likely it is that an entity would be disproportionately affected by the requirement to purchase higher efficiency product. In this analysis, a single entity would be a small, independent, or family-owned business that operates in a single location. Compared to large corporations and franchises, these single entities might be subjected to higher costs of capital. For the purpose of the subgroup analysis, a limited service establishment is a consumer that is likely to have a significantly lower operating time than the average consumer. A lower operating time would lead to lower operating cost savings over the lifetime of the product, making this subgroup of consumers disproportionately affected by amended efficiency standards. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis in greater detail.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of commercial prerinse spray valves and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative elements of the MIA rely on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. See section IV.J.2 for details on the GRIM. The qualitative parts of the MIA address factors such as product characteristics, characteristics of particular firms, and market trends. The complete MIA is discussed in chapter 12 of the NOPR TSD. DOE conducted the MIA in the three phases.

In Phase 1 of the MIA, DOE prepared a profile of the commercial prerinse spray valve manufacturing industry based on the market and technology assessment, information on the present and past market structure and characteristics of the industry, product attributes, product shipments, manufacturer markups, and the cost structure for various manufacturers.

The profile also included an analysis of manufacturers in the industry using Security and Exchange Commission 10–K filings, Standard & Poor's stock reports, and corporate annual reports released by publicly held companies.[36] DOE used this and other publicly available information to derive preliminary financial inputs for the GRIM, including an industry discount rate, manufacturer markup, cost of goods sold and depreciation, selling, general, and administrative (SG&A) expenses, and research and development (R&D) expenses.

Phase 2 focused on the financial impacts of potential amended energy conservation standards on the industry as a whole. Amended energy conservation standards can affect manufacturer cash flows in three distinct ways: (1) Create a need for increased investment, (2) raise per-unit production costs, and (3) alter manufacturer revenue due to possible changes in sales volumes and/or manufacturer's per-unit gross margins. DOE used the GRIM to model these effects in a cash-flow analysis of the commercial prerinse spray valve manufacturing industry. In performing this analysis, DOE used the financial parameters developed in Phase 1, the cost-efficiency curves from the engineering analysis, and the shipment assumptions from the NIA.

In phase 3, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small businesses, manufacturers of niche products, or companies exhibiting a cost structure that differs significantly from the

[35] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/memoranda/m03–21.html.*).

[36] SEC Form 10–K filings are available at *www.sec.gov/edgar.shtml.* Stock reports are available at *www.standardandpoors.com.*

industry average could be more negatively affected. While DOE did not identify any other subgroup of manufacturers of commercial prerinse spray valves that would warrant a separate analysis, DOE specifically investigated impacts on small business manufacturers. See section V.B.2.d and section VI.B of this notice for more information.

The MIA also addresses the direct impact on employment tied to the manufacturing of commercial prerinse spray valves. Using the GRIM and census data, DOE estimated the domestic labor expenditures and number of domestic production workers in the no-standards case and at each TSL from 2015 to 2048. See section V.B.2.b of this notice and chapter 12 of the NOPR TSD for more information on direct employment impacts.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to energy conservation standards. The GRIM is a standard, discounted cash-flow model that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs, and models changes in manufacturing costs, shipments, investments, and margins that may result from amended energy conservation standards. The GRIM uses these inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2015, and continuing to 2048. DOE uses the industry-average weighted average cost of capital (WACC) of 6.9 percent, as this represents the minimum rate of return necessary to cover the debt and equity obligations manufacturers use to finance operations.

DOE used the GRIM to compare INPV in the no-standards case with INPV at each TSL (the standards case). The difference in INPV between the base and standards cases represents the financial impact of the amended standard on manufacturers. Additional details about the GRIM can be found in chapter 12 of the NOPR TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

Manufacturer production costs are the costs to the manufacturer to produce a commercial prerinse spray valve. These costs include materials, labor, overhead, and depreciation. Changes in the MPCs of commercial prerinse spray valves can affect revenues, gross margins, and cash flow of the industry, making product cost data key inputs for DOE's analysis. DOE estimated the MPCs for the three commercial prerinse spray valve product classes at the baseline and higher efficiency levels, as described in section IV.C of this notice. The cost model also disaggregated the MPCs into the cost of materials, labor, overhead, and depreciation. DOE used the MPCs and cost breakdowns as described in section IV.C of this notice, and further detailed in chapter 5 of the NOPR TSD, for each efficiency level analyzed in the GRIM.

No-Standards Case Shipments Forecast

The GRIM estimates manufacturer revenues in each year of the forecast based in part on total unit shipments and the distribution of these values by efficiency level and product class. Generally, changes in the efficiency mix and total shipments at each standard level affect manufacturer finances. The GRIM uses the NIA shipments forecasts from 2015 to 2048, the end of the analysis period.

To calculate shipments, DOE developed a shipments model for each product class based on an analysis of key market drivers for commercial prerinse spray valves. For greater detail on the shipments analysis, see section IV.G of this notice and chapter 9 of the NOPR TSD.

Product and Capital Conversion Costs

Amended energy conservation standards may cause manufacturers to incur conversion costs to make necessary changes to their production facilities and bring product designs into compliance. For the MIA, DOE classified these costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in R&D, testing, marketing, and other non-capitalized costs focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

DOE contacted manufacturers of commercial prerinse spray valves for the purpose of conducting interviews. However, no manufacturer agreed to participate in an interview. In the absence of information from manufacturers, DOE created estimates of capital and product conversion costs using the engineering cost model and information gained during product teardowns. DOE's estimates of the product and capital conversion costs for the CPSV manufacturing industry can be found in section IV.J.2 of this notice and in chapter 12 of the NOPR TSD. DOE seeks information on capital and product conversion costs associated with amended standards for commercial prerinse spray valves.

b. GRIM Scenarios

Standards Case Shipments Forecasts

The MIA results presented in section V.B.2 of this notice use shipments from the NIA. For standards case shipments, DOE assumed that commercial prerinse spray valve consumers would choose to buy the commercial prerinse spray valve that has the flow rate that is closest to the flow rate of the product they currently use and that complies with the new standard (and, accordingly, manufacturers would choose to produce products with the closest flow rate to those they currently produce). Due to the structure of the product classes and efficiency levels for this rule, in certain instances, product class switching is predicted to occur, wherein consumers choose to buy the product with the flow rate that is closest to their current product's flow rate even if it has a higher spray force (putting those products into a different product class). Where product class switching does not occur, no-standards case shipments of products that did not meet the new standard would roll up to meet the standard starting in the compliance year. See section IV.G of this notice for a description of the standards case efficiency distributions.

The NIA also used historical data to derive a price scaling index to forecast product costs. The MPCs and MSPs in the GRIM use the default price forecast for all scenarios, which assumes constant pricing. See section IV.F.1 of this notice for a discussion of DOE's price forecasting methodology.

Markup Scenarios

MSP is equal to MPC times a manufacturer markup. The MSP includes direct manufacturing production costs (*i.e.,* labor, material, depreciation, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit.

DOE used the baseline manufacturer markup of 1.30, developed during Phase 1 and subsequently revised, for all products when modeling the no-standards case in the GRIM. DOE requests comment on the use of 1.30 as an appropriate baseline markup for all commercial prerinse spray valves.

For the standards case in the GRIM, DOE modeled two markup scenarios to represent the uncertainty regarding the potential impacts on prices and

profitability for manufacturers following the implementation of amended energy conservation standards. For both GRIM markup scenarios, DOE placed no premium on higher efficiency products. This is based on the assumption that efficiency is not the primary factor influencing purchasing decisions for commercial prerinse spray valve consumers. The two standards case markup scenarios are (1) a preservation of gross margin as a percentage of revenues markup scenario, and (2) a preservation of per-unit earnings before interest and taxes (EBIT) markup scenario.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.30 is maintained for all products in the standards case. Typically, this scenario represents the upper bound of industry profitability, as manufacturers are able to fully pass through additional costs due to amended standards to their consumers under this scenario.

The preservation of per-unit EBIT markup scenario is similar to the preservation of gross margin as a percentage of revenues markup scenario, with the exception that in the standards case minimally compliant products lose a fraction of the baseline markup. Typically, this scenario represents the lower bound for profitability and a more substantial impact on the industry as manufacturers accept a lower margin in an attempt to offer price competitive entry level products while maintaining the same level of EBIT, on a per-unit basis, that they saw prior to amended standards.

For the commercial prerinse spray valve industry, there is no difference between the preservation of gross margin as a percentage of revenues and the preservation of per-unit EBIT markup scenarios described previously. This is explained by the fact that manufacturing production costs are estimated to be constant across all standard efficiency levels (*i.e.,* baseline, EL 1, EL 2, EL 3), total shipments are constant across standards efficiency levels, and changes in standard case shipments for certain product classes as a result of product class switching (*e.g.,* a decrease in Standard Duty commercial prerinse spray valve shipments and an equivalent increase in Heavy Duty commercial prerinse spray valve shipments at all TSLs) are controlled for by using the per-unit EBIT in modeling the lower bound of industry profitability. Because the preservation of gross margin as a percentage of revenues and the preservation of per-unit EBIT markup scenarios produce the same results in the GRIM, DOE does not break out the results of each in the presentation of INPV impacts in section V.B.2.a of this notice. DOE requests comment on the appropriateness of assuming a constant manufacturer markup across all product classes and efficiency levels.

Capital Conversion Cost Scenarios

In order to estimate an upper and lower bound of industry profitability as a result of amended energy conservation standards for commercial prerinse spray valves, DOE developed two model scenarios for the capital conversion costs required to meet each TSL. The assumption underlying both scenarios is that capital conversion costs associated with increasing the efficiency of commercial prerinse spray valves are exclusively related to the fabrication of plastic nozzles, as manufacturers would have to redesign nozzle molds to produce a nozzle with fewer or smaller spray holes. DOE does not believe there would be capital conversion costs associated with the in-house fabrication of metal nozzles. A more detailed discussion of capital conversion cost assumptions is provided in chapter 12 of the NOPR TSD.

One capital conversion cost scenario, representing the upper bound of industry profitability, assumes that the majority of commercial prerinse spray valve manufacturers source components (including the nozzle) from component suppliers and simply assemble the commercial prerinse spray valves (*i.e.,* Sourced Components Scenario). The second scenario, representing the lower bound of industry profitability, assumes that all of the commercial prerinse spray valve manufacturers currently selling products with plastic spray nozzles fabricate these nozzles in-house (*i.e.,* Fabricated Components Scenario). More detail regarding these capital conversion cost scenarios is provided in chapter 12 of the NOPR TSD. Additionally, DOE requests comment on which capital conversion cost scenario more accurately reflects the expected capital conversion costs associated with amended standards for commercial prerinse spray valves.

3. Discussion of Comments

During the public comment period following the 2014 Framework public meeting, trade associations and a small business manufacturer of commercial prerinse spray valves provided several comments on the potential impact of amended energy conservation standards on manufacturers.

PMI stated that manufacturers are required to comply with Federal, state, and local regulations, and often strive to obtain additional certifications under EPA's WaterSense program, IAPMO, and the Canadian Standards Association (CSA). PMI stated that commercial prerinse spray valve manufacturers are required to file their products with many agencies, including the Federal Trade Commission (FTC), DOE, CEC, the State of Texas, and the State of Massachusetts. Collectively, these requirements impose a worrisome burden on manufacturers in terms of time and cost. (PMI, No. 10 at p. 2) T&S Brass commented that manufacturers of commercial prerinse spray valves are familiar with industry standards such as ASME A112.18.1/CSA B125.1 and ASTM F2324–13, and that manufacturers recognize the added burden of re-testing and certification due to design and/or performance changes. (T&S, No. 12 at p. 6)

DOE acknowledges the existence of Federal regulations, cleanability standards established by the State of California,[37] and third-party certification programs impacting commercial prerinse spray valve manufacturers. DOE investigates cumulative regulatory burden impacts associated with this rulemaking in section V.B.2.e of this notice, and in more detail in chapter 12 of the NOPR TSD. Additionally, DOE requests comment on the recertification costs associated with complying with industry standards that result from amended DOE standards for commercial prerinse spray valves. DOE will consider any such additional information when estimating product conversion costs for the final rule (section VII.E. of this notice).

NAFEM commented that DOE failed to show how the considerable costs of the regulation are economically justified. NAFEM also suggested that the economic impact on manufacturers and consumers, particularly small businesses, is considerable because the technology options suggested by DOE in the Framework document are not technologically feasible. (NAFEM, No. 9 at p. 2) Both T&S Brass and NAFEM agreed that small businesses should be analyzed as a manufacturer subgroup in the manufacturer impact analysis. (T&S, Public Meeting Transcript, No. 6 at p. 65 and NAFEM, No. 9 at p. 2) Additionally, T&S Brass commented that small businesses operate on strict budgets and operating costs. (T&S, No. 12 at p. 8)

[37] Commercial pre-rinse spray valves manufactured on or after January 1, 2006, shall be capable of cleaning 60 plates in an average time of not more than 30 seconds per plate. (*http://www.energy.ca.gov/2014publications/CEC-400-2014-009/CEC-400-2014-009-CMF.pdf*)

The economic impact on manufacturers is presented in section V.B.2. The economic impact on consumers is presented in section V.B.1. DOE analyzes the impacts of the rulemaking on small business manufacturers as a subgroup in section VI.B of this notice, and in section 12.6 of the NOPR TSD.

T&S Brass suggested that DOE include importers of commercial prerinse spray valves as a subgroup because the lack of enforcement by government agencies on importers has adverse effects on other commercial prerinse spray valve manufacturers who do follow the current regulations. (T&S, No. 12 at p.8)

Energy conservation standards set by DOE apply to imported commercial prerinse spray valves as well as commercial prerinse spray valves assembled or manufactured domestically. Commercial prerinse spray valves are subject to DOE's enforcement authority for energy conservation standards, regardless of whether they are imported or manufactured domestically. For this reason, DOE does not believe that importers of commercial prerinse spray valves should be considered as a manufacturing subgroup for this analysis.

4. Manufacturer Interviews

DOE contacted manufacturers representing an estimated 100 percent of the U.S. commercial prerinse spray valve market for the purpose of conducting interviews. However, no manufacturer agreed to participate in an interview.

K. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, NO_X, SO_2, and Hg from potential energy conservation standards for commercial prerinse spray valves. In addition to estimating impacts of standards on power sector emissions, DOE estimated emissions impacts in production activities (extracting, processing, and transporting fuels) that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. Together, these emissions account for the FFC. In accordance with DOE's FFC Statement of Policy (76 FR 51281 (Aug. 18, 2011) as amended at 77 FR 49701 (August 17, 2012)), the FFC analysis also includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases.

DOE conducted the emissions analysis using emissions factors for CO_2 and most of the other gases derived from data in *AEO2014.* Combustion emissions of CH_4 and N_2O were estimated using emissions intensity factors published by the EPA in its Greenhouse Gas (GHG) Emissions Factors Hub.[38] DOE developed separate emissions factors for power sector emissions and upstream emissions. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of the greenhouse gas by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[39] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

EIA prepares the *AEO* using NEMS. Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO2014* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2013.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and DC. SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005).

CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[40] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[41] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[42] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[43] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

Because *AEO2014* was prepared prior to the Supreme Court's opinion, it assumed that CAIR remains a binding regulation through 2040. Thus, DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force. However, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Beginning in 2016, however, SO_2 emissions will decline significantly as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO2014* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be

[38] See EPA emission factors for GHG inventories available at *www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[39] IPCC, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)] Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8 (2013).

[40] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[41] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[42] *See EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[43] *See Georgia* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014)* (*No. 11–1302).*

needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy efficiency standards will reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and DC.[44] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps. DOE estimated mercury emissions using emissions factors based on *AEO2014,* which incorporates the MATS.

In the 2014 Framework document, DOE requested comment and information on potential methods and data sources that can be used to assess emissions reductions as a result of water savings. In response to DOE's request, the Advocates commented that the analysis should take into account the off-site energy embedded by public water suppliers, private wells, and wastewater treatment systems serving locations with covered products that use water. The Advocates further stated that they intend to develop a more substantial recommendation regarding methods and data sources for this docket at a later date. (Advocates, No. 11 at pp. 2–3) DOE recognizes that there are emission reductions related to reduction in water production and distribution. However, currently there are no standardized models or tools that adequately account for these reductions as a result of water savings, and DOE was not able to analyze these potential emissions reductions.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this notice.

For this notice, DOE relied on a set of values for the SCC that was developed by a Federal interagency process. The basis for these values is summarized in the following sections, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[45] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics, and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate changes and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and will consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to

[44] CSAPR also applies to NO_X, and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X is slight.

[45] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC (2009).

quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach in modeling how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[46] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.5 presents the values in the 2010 interagency group report,[47] which is reproduced in appendix 14–A of the NOPR TSD.

TABLE IV.5—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per Metric Ton CO_2]

Year	Discount rate			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[48]

Table IV.6 shows the updated sets of SCC estimates in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14–B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

[46] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[47] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[48] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

TABLE IV.6—ANNUAL SCC VALUES FROM 2013 INTERAGENCY REPORT, 2010–2050 (2007$ PER METRIC TON CO_2)

Year	Discount rate			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The 2009 National Research Council report points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report adjusted to 2014$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. For each of the four sets of SCC values, the values for emissions in 2015 were $12.2, $41.1, $63.3, and $121 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

DOE has taken into account how amended energy conservation standards would reduce site NO_X emissions nationwide and increase power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions resulting from each of the TSLs considered for this notice based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $483 to $4,964 per short ton in 2014$.[49] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,723 per short ton (in 2014$), and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each TSL. The utility impact analysis is based on published output from NEMS, which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. Each year, NEMS is updated to produce the *AEO* reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of energy savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the product subject to standards, their suppliers, and related service firms. The direct employment impacts are addressed in the MIA. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than those in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy and water, (2) reduced spending on new energy supply by the utility industry, (3) potential increased spending on new products to which the new standards apply, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of

[49] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2006) (Available at: *www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf.*).

Labor Statistics (BLS).[50] The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[51] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from amended standards for commercial prerinse spray valves.

For the amended standard levels considered in this notice, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[52] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rulemaking. Because ImSET predicts small job impacts resulting from this rulemaking, regardless of these uncertainties, the actual job impacts are likely to be negligible in the overall economy. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential amended energy conservation standards for commercial prerinse spray valves. It addresses the TSLs examined by DOE and the projected impacts of each of these levels if adopted as energy conservation standards for commercial prerinse spray valves. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for commercial prerinse spray valves. These TSLs were developed using combinations of efficiency levels (ELs) for the product classes analyzed by DOE. DOE presents the results for those TSLs in this notice. DOE presents the results for all efficiency levels that were analyzed in the NOPR TSD. Table V.1 presents the TSLs and the corresponding efficiency levels for commercial prerinse spray valves. TSL 4 represents the maximum technologically feasible (''max-tech'') improvements in energy and water efficiency. TSL 3 is the combination of efficiency levels for each product class that yields the maximum total NPV. TSL 2 consists of the next efficiency level below the max-tech level for all product classes. TSL 1 consists of the first efficiency level considered above the baseline for all commercial prerinse spray valve product classes.

TABLE V.1—TRIAL STANDARD LEVELS FOR COMMERCIAL PRERINSE SPRAY VALVES

TSL	Light duty (≤5 ozf)		Standard duty (>5 ozf and ≤8 ozf)		Heavy duty (>8 ozf)	
	EL	Flow rate (gpm)	EL	Flow rate (gpm)	EL	Flow rate (gpm)
1	1	0.72	1	1.10	1	1.44
2	2	0.68	2	0.97	2	1.28
3	3	0.65	2	0.97	3	1.24
4	3	0.65	3	0.94	3	1.24

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on commercial prerinse spray valve consumers by looking at the effects potential amended standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of potential amended energy conservation standards on consumers of commercial prerinse spray valves, DOE conducted an LCC and PBP analysis for each TSL. In general, higher-efficiency products would affect consumers in two ways: (1) Purchase price would increase and (2) annual operating costs would decrease. Because DOE did not find that the purchase price of commercial prerinse spray valves increased with increasing efficiency, the only effect of higher-efficiency products to consumers is decreased operating costs. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs) and operating costs (*i.e.,* energy, and combined water prices, energy and combined water price trends). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the

[50] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov*.

[51] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

[52] J.M. Roop, M.J. Scott, and R.W. Schultz. *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.7 show the LCC and PBP results for all efficiency levels considered for commercial prerinse spray valves. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second of each pair of tables, the LCC savings are measured relative to the no-standards case efficiency distribution in the first year of the analysis period (see section IV.F.9 of this notice). No impacts occur when the no-standards case efficiency for a specific consumer equals or exceeds the efficiency at a given TSL as a standard would have no effect because the product installed would be at or above that standard level without amended standards. For commercial prerinse spray valves, DOE determined that there was no increase in purchase price with increasing efficiency level within each product class. Therefore, LCC and PBP results instead reflect differences in operating costs due to decreased energy and water use for each EL.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LIGHT DUTY (≤5 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
.....	0	79	373	1,957	2,036	.....	4.9
1	1	79	353	1,854	1,933	0.0	4.9
2	2	79	334	1,751	1,830	0.0	4.9
3, 4	3	79	319	1,674	1,753	0.0	4.9

NOTE: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR LIGHT DUTY (≤5 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2014$)
1	1	0	103
2	2	0	134
3, 4	3	0	211

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD DUTY (>5 ozf AND ≤8 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
.....	0	79	599	3,141	3,220	.....	4.9
1	1	79	540	2,832	2,911	0.0	4.9
2, 3	2	79	476	2,498	2,577	0.0	4.9
4	3	79	461	2,420	2,499	0.0	4.9

NOTE: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR STANDARD DUTY (>5 ozf AND ≤8 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2014$)
1	1	0	309
2, 3	2	0	472

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR STANDARD DUTY (>5 ozf AND ≤8 ozf) COMMERCIAL PRERINSE SPRAY VALVES—Continued

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2014$)
4	3	0	549

NOTE: The calculation includes consumers with zero LCC savings (no impact).

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HEAVY DUTY (>8 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	79	785	4,120	4,199		4.9
1	1	79	707	3,708	3,787	0.0	4.9
2	2	79	628	3,296	3,375	0.0	4.9
3, 4	3	79	609	3,193	3,272	0.0	4.9

NOTE: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR HEAVY DUTY (>8 ozf) COMMERCIAL PRERINSE SPRAY VALVES

TSL	EL	Life-cycle cost savings	
		% of consumers that experience (net cost)	Average savings * (2014$)
1	1	0	412
2	2	0	595
3, 4	3	0	667

NOTE: The calculation includes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

As described in section IV.I of this notice, DOE determined the impact of the considered TSLs on small businesses and limited service establishments. Table V.8 through Table V.10 compare the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample for each product class for commercial prerinse spray valves. The average LCC savings for single entities and limited service establishments at the considered efficiency levels are not substantially different from the average for all consumers. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the two subgroups.

TABLE V.8—LIGHT DUTY (≤5 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	97	82	103	0.0	0.0	0.0
2	126	107	134	0.0	0.0	0.0
3	198	169	211	0.0	0.0	0.0
4	198	169	211	0.0	0.0	0.0

TABLE V.9—STANDARD DUTY (≤5 ozf AND >8 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	290	247	309	0.0	0.0	0.0
2	444	378	472	0.0	0.0	0.0
3	444	378	472	0.0	0.0	0.0
4	516	439	549	0.0	0.0	0.0

TABLE V.10—HEAVY DUTY (>8 ozf) COMMERCIAL PRERINSE SPRAY VALVES: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL CONSUMERS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Single entities	Limited service establishments	All consumers	Single entities	Limited service establishments	All consumers
1	387	330	412	0.0	0.0	0.0
2	559	476	595	0.0	0.0	0.0
3	627	533	667	0.0	0.0	0.0
4	627	533	667	0.0	0.0	0.0

c. Rebuttable Presumption Payback

As discussed in section IV.F.11, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for products that meets the standard is less than three times the value of the first-year energy and water savings resulting from the standard. In calculating a rebuttable presumption payback period for the considered standard levels, DOE used discrete values rather than distributions for input values, and, as required by EPCA, based the energy and water use calculation on the DOE test procedures for commercial prerinse spray valves. As a result, DOE calculated a single rebuttable presumption payback value, and not a distribution of payback periods, for each efficiency level. Table V.11 presents the rebuttable-presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this proposed rule are economically justified through a more detailed analysis of the economic impacts of those levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). As indicated in the engineering analysis, there is no increased purchase cost for products that meets the standard, so the rebuttable PBP for each considered TSL is zero.

TABLE V.11—COMMERCIAL PRERINSE SPRAY VALVES: REBUTTABLE PBPS

Product class	Rebuttable payback period for trial standard level (years)			
	1	2	3	4
Light Duty (≤5 ozf)	0.0	0.0	0.0	0.0
Standard Duty (>5 ozf and ≤8 ozf)	0.0	0.0	0.0	0.0
Heavy Duty (>8 ozf)	0.0	0.0	0.0	0.0

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of commercial prerinse spray valves. Section V.B.2.a describes the expected impacts on manufacturers at each TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

DOE modeled two scenarios using different markup assumptions and two scenarios using different conversion cost assumptions, for a total of four different scenarios, in order to evaluate the range of cash flow impacts on the commercial prerinse spray valve manufacturing industry of amended energy conservation standards. However, as described in section IV.J.2, given constant manufacturing production costs for all product classes and across all standard efficiency levels, and constant total industry shipments, there is no difference in INPV impacts between the two markup scenarios. Therefore, DOE reports only the two capital conversion cost scenario's INPV results. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These assumptions correspond to the bounds of a range of capital conversion costs that DOE anticipates

could occur in the standards case. The following tables illustrate the financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of commercial prerinse spray valves, as well as the conversion costs that DOE estimates manufacturers would incur for each product class at each TSL.

The INPV results refer to the difference in industry value between the no-standards case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2015) through the end of the analysis period (2048). The discussion also notes the difference in cash flow between the no-standards case and the standards case in the year before the compliance date of potential amended energy conservation standards.

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—WITH THE SOURCED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ millions*	9.1	8.5	8.1	8.0	8.0
Change in INPV	*2014$ millions*		(0.6)	(1.0)	(1.1)	(1.1)
	%		(7.0)	(11.5)	(12.1)	(12.1)
Product Conversion Costs	*2014$ millions*		1.1	1.7	1.8	1.8
Capital Conversion Costs	*2014$ millions*		0.1	0.2	0.2	0.2
Total Conversion Costs	*2014$ millions*		1.2	1.9	2.0	2.0
Free Cash Flow (2018)	2014$ millions	0.5	0.17	(0.04)	(0.07)	(0.07)
	% Change		(65.8)	(108.2)	(113.8)	(113.8)

* Parentheses indicate negative values.

TABLE V.13—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PRERINSE SPRAY VALVES—WITH THE FABRICATED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ millions*	9.1	7.7	7.2	7.1	7.1
Change in INPV	*2014$ millions*		(1.4)	(1.9)	(2.0)	(2.0)
	%		(15.0)	(21.0)	(21.6)	(21.6)
Product Conversion Costs	*2014$ millions*		1.1	1.7	1.8	1.8
Capital Conversion Costs	*2014$ millions*		0.9	1.2	1.2	1.2
Total Conversion Costs	*2014$ millions*		2.0	2.9	3.0	3.0
Free Cash Flow (2018)	*2014$ millions*	0.5	(0.2)	(0.5)	(0.5)	(0.5)
	% Change		(142.8)	(198.8)	(204.4)	(204.4)

* Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV to range from −$1.4 million to −$0.6 million, or a change in INPV of −15.0 percent to −7.0 percent for the Fabricated Components and Sourced Components Capital Conversion Costs scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 142.8 percent to −$0.2 million, compared to the no-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. As DOE forecasts that approximately 65 percent of commercial prerinse spray valves in the no-standards case shipments scenario will meet TSL 1 in the first year that standards are in effect (2019), 35 percent of the market is affected at this standard level. The impact on INPV at TSL 1 stems exclusively from the conversion costs associated with the conversion of baseline units to those meeting the standards set at TSL 1. At TSL 1, because the industry already produces a substantial number of products at this efficiency level, product and capital conversion costs are limited to approximately $1.2 million for the Sourced Components Capital Conversion Costs scenario and $2.0 million for the Fabricated Components Capital Conversion Costs scenario.

DOE notes that the shift of 20 percent of shipments from the Standard Duty to Heavy Duty product class does not have a significant impact on overall INPV because MPCs are the same across all product classes. For this reason, and because per-unit product conversion costs are the same for any product that has a change in flow rate and spray force at each efficiency level, and because capital conversion costs are a function of the material of the spray nozzle rather than the spray force (*i.e.,* product class), DOE does not believe product class switching will have a detrimental impact on commercial prerinse spray valve manufacturers beyond the impact felt in the absence of product class switching.

At TSL 2, DOE estimates impacts on INPV to range from −$1.9 million to −$1.0 million, or a change in INPV of −21.0 percent to −11.5 percent for the Fabricated Components and Sourced Components Capital Conversion Costs scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 198.8 percent to −$0.5 million, compared to the no-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. As it is estimated that only approximately 20 percent of commercial prerinse spray valves will meet the efficiency levels specified at TSL 2 in the first year that standards are in effect (2019), a substantial fraction of the market is affected at this standard level. As with TSL 1, the impact on INPV at TSL 2 stems exclusively from the conversion costs associated with the conversion of

lower efficiency units to those meeting the standards set at TSL 2. At TSL 2, because the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $1.9 million for the Sourced Components Capital Conversion Costs scenario and $2.9 million for the Fabricated Components Capital Conversion Costs scenario. Again, DOE notes that the shift of 20 percent of shipments from the Standard Duty to Heavy Duty product class, at this TSL does not have a significant impact on overall INPV due to the fact that MPCs are constant across all product classes and conversion costs are not a function of product class.

At TSL 3, DOE estimates impacts on INPV to range from −$2.0 million to −$1.1 million, or a change in INPV of −21.6 percent to −12.1 percent for the Fabricated Components and Sourced Components Capital Conversion Cost scenarios, respectively. At this level, industry free cash flow is estimated to decrease by as much as 204.4 percent to −$0.5 million, compared to the no-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. As it is estimated that less than 20 percent of commercial prerinse spray valves will meet the efficiency levels specified at TSL 3 in the first year that standards are in effect (2019), a substantial fraction of the market is affected at this standard level. Again, the impact on INPV at TSL 3 stems exclusively from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 3. At this TSL, because the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $2.0 million for the Sourced Components Capital Conversion Costs scenario and $3.0 million for the Fabricated Components Capital Conversion Costs model. Again, DOE notes that the shift of 20 percent of shipments from the Standard Duty to Heavy Duty product class, at this TSL does not have a significant impact on overall INPV due to the fact that MPCs are constant across all product classes and conversion costs are not a function of product class.

Finally, at TSL 4, DOE estimates impacts on INPV to range from −$2.0 million to −$1.1 million, or a change in INPV of −21.6 percent to −12.1 percent for the Fabricated Components and Sourced Components Capital Conversion Cost scenarios, respectively. Impacts are the same as at TSL 3 due to the fact that no Standard Duty commercial prerinse spray valves at efficiency level 2 (greater than 0.94 gpm and less than or equal to 0.97 gpm) are currently marketed. At this level, industry free cash flow is estimated to decrease by as much as 204.4 percent to −$0.5 million, compared to the no-standards case value of $0.5 million in the year leading up to the amended energy conservation standards. Again, the impact on INPV at TSL 4 stems exclusively from the conversion costs associated with the conversion of lower efficiency units to those meeting the standards set at TSL 4. At this TSL, because the majority of commercial prerinse spray valves will have to be updated to reach the standard level, product and capital conversion costs are estimated to be approximately $2.0 million for the Sourced Components Capital Conversion Costs scenario and $3.0 million for the Fabricated Components Capital Conversion Costs scenario. DOE notes that the shift of 45 percent of shipments from the Standard Duty to Heavy Duty product class, at this TSL does not have a significant impact on overall INPV due to the fact that MPCs are constant across all product classes and conversion costs are not a function of product class.

b. Impacts on Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the no-standards case and at each TSL from 2014 to 2048. DOE used the labor content of each product and the MPCs from the engineering analysis to estimate the total annual labor expenditures associated with commercial prerinse spray valves sold in the United States. Using statistical data from the most recent U.S. Census Bureau's 2011 ''Annual Survey of Manufactures'' (2011 ASM) as well as market research, DOE estimates that 100 percent of commercial prerinse spray valves sold in the United States are assembled domestically, and hence that portion of total labor expenditures is attributable to domestic labor. Labor expenditures for the manufacturing of products are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

Using the GRIM, DOE forecasts the domestic labor expenditure for commercial prerinse spray valve production labor in 2019 will be approximately $2.0 million. Using the $21.86 hourly wage rate including fringe benefits and 2,039 production hours per year per employee found in the 2011 ASM, DOE estimates there will be approximately 44 domestic production workers involved in assembling and, to a lesser extent, fabricating components for commercial prerinse spray valves in 2019, the year in which any amended standards would go into effect. In addition, DOE estimates that 22 non-production employees in the United States will support commercial prerinse spray valve production. The employment spreadsheet of the commercial prerinse spray valve GRIM shows the annual domestic employment impacts in further detail.

The production worker estimates in this section cover workers only up to the line-supervisor level who are directly involved in fabricating and assembling commercial prerinse spray valves within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as material handling with a forklift, are also included as production labor. Additionally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 12 of the NOPR TSD.

Table V.14 depicts the potential levels of production employment that could result following amended energy conservation standards as calculated by the GRIM. The employment levels shown reflect the scenario in which manufacturers continue to produce the same scope of covered products in domestic facilities and domestic production is not shifted to lower-labor-cost countries. The following discussion includes a qualitative evaluation of the likelihood of negative domestic production employment impacts at the various TSLs.

TABLE V.14—TOTAL NUMBER OF DOMESTIC COMMERCIAL PRERINSE SPRAY VALVE PRODUCTION WORKERS IN 2019

	No-standards case	Trial standard level			
		1	2	3	4
Total Number of Domestic Production Workers in 2019 (without changes in production locations)	44	44	44	44	44

The design option specified for achieving greater efficiency levels (*i.e.* changing the total spray hole area of the commercial prerinse spray valve nozzle) does not increase the labor content (measured in dollars) of commercial prerinse spray valves at any EL, nor does it increase total MPC. Additionally, total industry shipments are forecasted to be constant across TSLs. Therefore, DOE predicts no change in domestic manufacturing employment levels provided manufacturers do not relocate production facilities outside of the United States.

c. Impacts on Manufacturing Capacity

Less than 20 percent of shipments of commercial prerinse spray valves already comply with the amended energy conservation standards proposed in this rulemaking. Not every manufacturer that ships commercial prerinse spray valves offers products that meet these amended energy conservation standards. However, because DOE believes that manufacturers would not need to make substantial platform changes by the 2019 compliance date in order to upgrade their products to meet the amended energy conservation standards proposed in this rulemaking, DOE does not foresee any impact on manufacturing capacity during the period leading up to the compliance date. DOE seeks additional comment on the impact to manufacturing capacity between the issuance date and the compliance date of any amended energy conservation standards for commercial prerinse spray valves.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE examined the potential for disproportionate impacts on small business manufacturers, as discussed in section VI.B of this notice. DOE did not identify any other manufacturer subgroups for this rulemaking.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its energy conservation standards rulemakings.

For the cumulative regulatory burden, DOE considers other DOE regulations that could affect commercial prerinse spray valve manufacturers that will take effect approximately 3 years before or after the analysis compliance date of amended energy conservation standards. The compliance years and expected industry conversion costs of energy conservation standards that may also impact commercial prerinse spray valve manufacturers are indicated in Table V.15

TABLE V.15—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING COMMERCIAL PRERINSE SPRAY VALVE MANUFACTURERS

Regulation	Approximate compliance date	Estimated conversion costs (million)
General Service Fluorescent Lamps; 80 FR 4041 (January 26, 2015)	1/26/2018	$38.6
Commercial Refrigerators, Freezers and Refrigerator-Freezers; 79 FR 17725 (March 28, 2014)	3/27/2017	43.1
External Power Supplies; 79 FR 7846 (February 10, 2014)	2/10/2016	43.4

* Estimated compliance date.

In addition to DOE's energy conservation regulations for commercial prerinse spray valves and other products also sold by commercial prerinse spray valve manufacturers, several other existing and pending regulations apply to commercial prerinse spray valves. In response to the Framework document and public meeting for this rulemaking, manufacturers and trade groups provided comments relating to regulatory burdens associated with third-party and international industry standards and certification programs (*e.g.,* ASME A112.18.1/CSA B125.1, ASTM F2324) and state water efficiency regulations (*e.g.* California, Texas, and Massachusetts). DOE summarized these comments in section IV.J.3 of this notice. See chapter 12 of the NOPR TSD for the results of DOE's analysis of the cumulative regulatory burden.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy and water savings attributable to potential standards for commercial prerinse spray valves, DOE compared the energy and water consumption of these product types under the no-standards case to their anticipated energy and water consumption under each TSL. Table V.16 through Table V.19 present DOE's

projections of the national energy savings and national water savings for each TSL considered for commercial prerinse spray valves. The savings were calculated using the approach described in section IV.H.1 of this notice.

TABLE V.16—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048 FOR TSL 1

TSL	Product class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
1	Light Duty (≤5 ozf)	0.001	0.001	1.305
	Standard Duty (>5 ozf and ≤8 ozf)	0.206	0.223	265.371
	Heavy Duty (>8 ozf)	(0.193)	(0.209)	(248.840)
	TOTAL TSL 1	0.014	0.015	17.836

* quads = quadrillion British thermal units.

TABLE V.17—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048 FOR TSL 2

TSL	Product class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
2	Light Duty (≤5 ozf)	0.004	0.005	5.655
	Standard Duty (>5 ozf and ≤8 ozf)	0.234	0.252	300.718
	Heavy Duty (>8 ozf)	(0.157)	(0.169)	(201.856)
	TOTAL TSL 2	0.081	0.088	104.517

* quads = quadrillion British thermal units.

TABLE V.18—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048 FOR TSL 3

TSL	Product class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
3	Light Duty (≤5 ozf)	0.007	0.007	8.918
	Standard Duty (>5 ozf and ≤8 ozf)	0.234	0.252	300.718
	Heavy Duty (>8 ozf)	(0.147)	(0.159)	(189.458)
	TOTAL TSL 3	0.093	0.101	120.178

* quads = quadrillion British thermal units.

TABLE V.19—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2048 FOR TSL 4

TSL	Product class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
4	Light Duty (≤5 ozf)	0.007	0.007	8.918
	Standard Duty (>5 ozf and ≤8 ozf)	0.439	0.474	564.457
	Heavy Duty (>8 ozf)	(0.409)	(0.442)	(526.609)
	TOTAL TSL 4	0.036	0.039	46.766

* quads = quadrillion British thermal units.

OMB Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs.[53] Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such

[53] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis,'' section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

revised standards.[54] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to CPSV equipment. Thus, such results are presented for informational purposes only, and are not indicative of any change in DOE's analytical methodology. Table V.20 through Table V.23 report cumulative national energy and water savings associated with this shorter analysis period of 2019–2027. The impacts are counted over the lifetime of products purchased during this period.

TABLE V.20—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027 FOR TSL 1

TSL	Equipment class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
1	Light Duty (≤5 ozf)	0.000	0.000	0.352
	Standard Duty (>5 ozf and ≤8 ozf)	0.057	0.062	71.472
	Heavy Duty (>8 ozf)	(0.054)	(0.058)	(67.019)
	TOTAL TSL 1	0.004	0.004	4.804

* quads = quadrillion British thermal units.

TABLE V.21—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027 FOR TSL 2

TSL	Equipment class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
2	Light Duty (≤5 ozf)	0.001	0.001	1.523
	Standard Duty (>5 ozf and ≤8 ozf)	0.065	0.070	80.992
	Heavy Duty (>8 ozf)	(0.044)	(0.047)	(54.365)
	TOTAL TSL 2	0.023	0.024	28.149

* quads = quadrillion British thermal units.

TABLE V.22—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027 FOR TSL 3

TSL	Equipment class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
3	Light Duty (≤5 ozf)	0.002	0.002	2.402
	Standard Duty (>5 ozf and ≤8 ozf)	0.065	0.070	80.992
	Heavy Duty (>8 ozf)	(0.041)	(0.044)	(51.026)
	TOTAL TSL 3	0.026	0.028	32.367

* quads = quadrillion British thermal units.

TABLE V.23—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027 FOR TSL 4

TSL	Equipment class	National energy savings (*quads*) *		National water savings (*billion gal*)
		Primary	FFC	
4	Light Duty (≤5 ozf)	0.002	0.002	2.402
	Standard Duty (>5 ozf and ≤8 ozf)	0.122	0.131	152.024
	Heavy Duty (>8 ozf)	(0.114)	(0.122)	(141.830)
	TOTAL TSL 4	0.010	0.011	12.595

* quads = quadrillion British thermal units.

[54] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6313(a)(6)(C)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total costs and savings for consumers that would result from particular standard levels for commercial prerinse spray valves. In accordance with OMB's guidelines on regulatory analysis, DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.24 through Table V.27 show the consumer NPV results for each TSL DOE considered for commercial prerinse spray valves. The impacts are counted over the lifetime of products purchased in 2019–2048.

TABLE V.24—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048 FOR TSL 1

TSL	Product class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
1	Light Duty (≤5 ozf)	$0.008	$0.016
	Standard Duty (>5 ozf and ≤8 ozf)	1.604	3.295
	Heavy Duty (>8 ozf)	(1.507)	(3.095)
	TOTAL TSL 1	0.105	0.216

TABLE V.25—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048 FOR TSL 2

TSL	Product class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
2	Light Duty (≤5 ozf)	$0.033	$0.069
	Standard Duty (>5 ozf and ≤8 ozf)	1.813	3.724
	Heavy Duty (>8 ozf)	(1.230)	(2.524)
	TOTAL TSL 2	0.616	1.269

TABLE V.26—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048 FOR TSL 3

TSL	Product class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
3	Light Duty (≤5 ozf)	$0.053	$0.108
	Standard Duty (>5 ozf and ≤8 ozf)	1.813	3.724
	Heavy Duty (>8 ozf)	(1.157)	(2.374)
	TOTAL TSL 3	0.708	1.459

TABLE V.27—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCT SHIPPED IN 2019–2048 FOR TSL 4

TSL	Product class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
4	Light Duty (≤5 ozf)	$0.053	$0.108
	Standard Duty (>5 ozf and ≤8 ozf)	3.418	7.018
	Heavy Duty (>8 ozf)	(3.195)	(6.559)
	TOTAL TSL 4	0.276	0.568

As described previously in the discussion of the energy and water savings results, DOE also determined financial impacts for a sensitivity case utilizing a 9-year analysis period. Table V.28 through Table V.31 report NPV results associated with this shorter analysis period. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, this information is presented for informational purposes

only, and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.28—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027 FOR TSL 1

TSL	Equipment class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
1	Light Duty (≤5 ozf)	$0.003	$0.005
	Standard Duty (>5 ozf and ≤8 ozf)	0.708	1.034
	Heavy Duty (>8 ozf)	(0.665)	(0.971)
	TOTAL TSL 1	0.046	0.068

TABLE V.29—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027 FOR TSL 2

TSL	Equipment class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
2	Light Duty (≤5 ozf)	$0.015	$0.021
	Standard Duty (>5 ozf and ≤8 ozf)	0.800	1.168
	Heavy Duty (>8 ozf)	(0.544)	(0.793)
	TOTAL TSL 2	0.271	0.397

TABLE V.30—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027 FOR TSL 3

TSL	Equipment class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
3	Light Duty (≤5 ozf)	$0.023	$0.034
	Standard Duty (>5 ozf and ≤8 ozf)	0.800	1.168
	Heavy Duty (>8 ozf)	(0.511)	(0.746)
	TOTAL TSL 3	0.312	0.456

TABLE V.31—COMMERCIAL PRERINSE SPRAY VALVES: CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR EQUIPMENT SHIPPED IN 2019–2027 FOR TSL 4

TSL	Equipment class	Net present value (billion $2014)	
		7-percent discount rate	3-percent discount rate
4	Light Duty (≤5 ozf)	$0.023	$0.034
	Standard Duty (>5 ozf and ≤8 ozf)	1.509	2.203
	Heavy Duty (>8 ozf)	(1.411)	(2.059)
	TOTAL TSL 4	0.121	0.177

c. Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed previously, DOE expects energy conservation standards for commercial prerinse spray valves to reduce energy and water bills for product owners, and the resulting net savings to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. Thus, indirect employment impacts may result from expenditures shifting between goods (the substitution effect) and changes in income and overall expenditures (the income effect) that could occur due to amended energy conservation standards. As described in section IV.N of this notice, DOE used an

input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2020–2025), where these uncertainties are reduced.

The results suggest that the proposed amended standards are likely to have negligible impact on the net demand for labor in the economy. All TSLs increase net demand for labor by fewer than 500 jobs. The net change in jobs is so small that it would be imperceptible in national labor statistics, and it might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding indirect employment impacts. As shown in Table V.32, DOE estimates that net indirect employment impacts from a CPSV amended standard are small relative to the national economy.

TABLE V.32—NET SHORT-TERM CHANGE IN EMPLOYMENT (JOBS)

Trial standard level	2020	2025
1	16	45
2	95	266
3	109	306
4	43	119

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this proposed rule, and discussed in section IV.C.1, DOE has tentatively concluded that the standards proposed in this NOPR would not reduce the utility or performance of the commercial prerinse spray valves under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed amended standards.

5. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to DOE, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(ii))

DOE will transmit a copy of this notice and the accompanying TSD to the Attorney General, requesting that the DOJ provide its determination on this issue. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the nation's energy security, strengthens the economy, and reduces the environmental impacts of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity for the TSLs that DOE considered in this rulemaking.

Energy savings from amended standards for commercial prerinse spray valves could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.33 provides DOE's estimate of cumulative emissions reductions to result from the TSLs considered in this rulemaking. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.33—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR COMMERCIAL PRERINSE SPRAY VALVES TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048

	TSL			
	1	2	3	4
Power Sector and Site Emissions				
CO_2 (million metric tons)	0.78	4.58	5.27	2.05
NO_X (thousand tons)	0.85	4.99	5.73	2.23
Hg (tons)	0.0011	0.0064	0.0074	0.0029
N_2O (thousand tons)	0.0063	0.0371	0.0427	0.0166
CH_4 (thousand tons)	0.05	0.27	0.31	0.12
SO_2 (thousand tons)	0.36	2.09	2.40	0.93
Upstream Emissions				
CO_2 (million metric tons)	0.07	0.43	0.49	0.19
NO_X (thousand tons)	1.11	6.51	7.49	2.91
Hg (tons)	0.00001	0.0001	0.0001	0.0000
N_2O (thousand tons)	0.00	0.00	0.00	0.00
CH_4 (thousand tons)	6.92	40.55	46.63	18.15
SO_2 (thousand tons)	0.00	0.02	0.03	0.01
Total Emissions				
CO_2 (million metric tons)	0.85	5.01	5.76	2.24

TABLE V.33—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR COMMERCIAL PRERINSE SPRAY VALVES TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048—Continued

	TSL			
	1	2	3	4
NO_X (thousand tons)	1.96	11.50	13.22	5.15
Hg (tons)	0.0011	0.0065	0.0074	0.0029
N_2O (thousand tons)	0.0066	0.0388	0.0446	0.0174
N_2O (thousand tons CO_2eq)	1.75	10.28	11.82	4.60
CH_4 (thousand tons)	6.97	40.83	46.94	18.27
CH_4 (thousand tons CO_2eq))	195.09	1143.16	1314.46	511.51
SO_2 (thousand tons)	0.36	2.11	2.43	0.94

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for commercial prerinse spray valves. As discussed in section IV.L of this notice, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2 per metric ton (the average value from a distribution that uses a 5-percent discount rate), $41.1 per metric ton (the average value from a distribution that uses a 3-percent discount rate), $63.3 per metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $121 per metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (emissions-related costs) as the projected magnitude of climate change increases.

Table V.34 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.34—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS

TSL	SCC Case * (million 2014$)			
	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
Primary Energy Emissions				
1	6.0	26.7	42.0	82.4
2	35.2	156.3	246.2	482.9
3	40.5	179.7	283.1	555.2
4	15.8	69.9	110.2	216.1
Upstream Emissions				
1	0.6	2.5	3.9	7.6
2	3.2	14.4	22.7	44.6
3	3.7	16.6	26.1	51.3
4	1.4	6.5	10.2	20.0
Total Emissions				
1	6.6	29.1	45.9	90.0
2	38.5	170.7	268.9	527.5
3	44.2	196.3	309.2	606.5
4	17.2	76.4	120.3	236.0

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $41.1, $63.3, and $121 per metric ton (2014$).

DOE is well aware that scientific and economic knowledge regarding the contribution of CO_2 and other GHG emissions to changes in the future global climate as well as the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the

most recent values and analyses resulting from the interagency process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for commercial prerinse spray valves. The dollar-per-ton values that DOE used are discussed in section IV.L of this notice. Table V.35 presents the cumulative present values for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.35—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER COMMERCIAL PRERINSE SPRAY VALVES TRIAL STANDARD LEVELS

[Million 2014$]

TSL	3% discount rate	7% discount rate
Power Sector Emissions		
1	1.3	0.7
2	7.6	3.9
3	8.7	4.5
4	3.4	1.8
Upstream Emissions		
1	1.7	0.8
2	9.7	4.9
3	11.1	5.6
4	4.3	2.2
Total Emissions		
1	2.9	1.5
2	17.2	8.8
3	19.8	10.1
4	7.7	3.9

7. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.36 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and a 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed in section V.B.6.

TABLE V.36—PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Billion 2014$			
	SCC value of $12.2/metric ton CO_2* and medium value for NO_X**	SCC value of $41.1/metric ton CO_2* and medium value for NO_X**	SCC value of $63.3/metric ton CO_2* and medium value for NO_X**	SCC value of $121/metric ton CO_2* and medium value for NO_X**
Consumer NPV at 3% Discount Rate added with:				
1	0.226	0.249	0.265	0.309
2	1.324	1.457	1.555	1.813
3	1.523	1.675	1.788	2.085
4	0.593	0.652	0.696	0.811
Consumer NPV at 7% Discount Rate added with:				
1	0.113	0.136	0.152	0.197
2	0.663	0.795	0.894	1.152
3	0.762	0.914	1.027	1.325
4	0.297	0.356	0.400	0.515

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $41.1, $63.3, and $121 per metric ton (2014$).
** The medium value for NO_X is $2,723 per short ton (2014$).

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019 to 2048. Because CO_2 emissions have a very long residence

time in the atmosphere,[55] the SCC values in future years reflect future climate-related impacts resulting from the emission of CO_2 that continue beyond 2100.

8. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) DOE did not consider any other factors in this analysis.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered products must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE considered the impacts of standards at each TSL, beginning with a maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each trial standard level, Table V.37 and Table V.38 present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. Those include the impacts on identifiable subgroups of consumers that may be disproportionately affected by a national standard and impacts on employment. Section V.B.1.b presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on direct employment in CPSV manufacturing in section IV.J.4, and discusses the indirect employment impacts in section IV.N.

1. Benefits and Burdens of TSLs Considered for Commercial Prerinse Spray Valves

Table V.37 and Table V.38 summarize the quantitative impacts estimated for each TSL for commercial prerinse spray valves. The efficiency levels contained in each TSL are described in section V.A of this notice.

TABLE V.37—SUMMARY OF RESULTS FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC Energy Savings (quads)				
	0.01	0.09	0.10	0.04
Cumulative Water Savings (billion gal)				
	17.84	104.52	120.18	46.77
NPV of Consumer Benefits (2014$ billion)				
3% discount rate	0.22	1.27	1.46	0.57
7% discount rate	0.11	0.62	0.71	0.28
Cumulative FFC Emissions Reduction				
CO_2 (million metric tons)	0.85	5.01	5.76	2.24
NO_X (thousand tons)	1.96	11.50	13.22	5.15
Hg (tons)	0.0011	0.0065	0.0074	0.0029
N_2O (thousand tons)	0.0066	0.0388	0.0446	0.0174
N_2O (thousand tons CO_2eq*)	1.75	10.28	11.82	4.60
CH_4 (thousand tons)	6.97	40.83	46.94	18.27
CH_4 (thousand tons CO_2eq*)	195.09	1143.16	1314.46	511.51
SO_2 (thousand tons)	0.36	2.11	2.43	0.94
Value of Emissions Reduction				
CO_2 (2014$ million)**	6.6 to 90.0	38.5 to 527.5	44.2 to 606.5	17.2 to 236.0
NO_X – 3% discount rate (2014$ million)	2.94	17.25	19.83	7.72
NO_X – 7% discount rate (2014$ million)	1.50	8.82	10.14	3.95

* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

[55] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105 (2005).

TABLE V.38—SUMMARY OF RESULTS FOR COMMERCIAL PRERINSE SPRAY VALVE TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2*	TSL 3*	TSL 4*
Manufacturer Impacts				
Industry NPV Relative to a No-Standards Case Value of 9.1 (2014$ million, 6.9% discount rate)	7.7 to 8.5	7.2 to 8.1	7.1 to 8.0	7.1 to 8.0
Industry NPV (% change)	(15.0) to (7.0)	(21.0) to (11.5)	(21.6) to (12.1)	(21.6) to (12.1)
Direct Employment Impacts				
Potential Increase in Domestic Production Workers in 2019	0	0	0	0
Consumer Average LCC Savings (2014$)				
Light Duty (≤5 ozf)	16	68	107	107
Standard Duty (>5 and ≤8 ozf)	125	429	429	499
Heavy Duty (>8 ozf)	166	541	640	640
Consumer Simple PBP (years)				
Light Duty (≤5 ozf)	0.0	0.0	0.0	0.0
Standard Duty (>5 and ≤8 ozf)	0.0	0.0	0.0	0.0
Heavy Duty (>8 ozf)	0.0	0.0	0.0	0.0
Distribution of Consumer LCC Impacts				
Light Duty (≤5 ozf)				
Net Cost (%)	0%	0%	0%	0%
Standard Duty (>5 and ≤8 ozf)				
Net Cost (%)	0%	0%	0%	0%
Heavy Duty (>8 ozf)				
Net Cost (%)	0%	0%	0%	0%

*Parentheses indicate negative (−) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 0.04 quads of energy and 46.77 billion gallons of water. Under TSL 4, the NPV of consumer benefit would be $0.28 billion using a discount rate of 7 percent, and $0.57 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 2.24 Mt of CO_2, 5.15 thousand tons of NO_X, 0.94 thousand tons of SO_2, 0.003 tons of Hg, 0.02 thousand tons of N_2O, and 18.27 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $17 million to $236 million.

At TSL 4, the average LCC impact is a savings of $107 for light duty CPSV models, $499 for standard duty models, and $640 for heavy duty models. The simple payback period is 0.0 years for all CPSV models. The fraction of consumers experiencing an LCC net cost is 0 percent for all CPSV models.

At TSL 4, the projected change in INPV ranges from a decrease of $2.0 million to a decrease of $1.1 million. If the lower bound of the range of impacts is reached, TSL 4 could result in a net loss of up to 21.6 percent in INPV for manufacturers.

Although TSL 4 for commercial prerinse spray valves provides positive LCC savings, and a positive total NPV of consumer benefits, TSL 3 provides for greater energy savings at a similar burden to the industry. Consequently, DOE has tentatively concluded that TSL 4 does not provide the maximum reduction in energy use that is technologically feasible. (42 U.S.C. 6295(p)(1)

Next DOE considered TSL 3, which saves an estimated total of 0.10 quads of energy, and 120.18 billion gallons of water. TSL 3 has an estimated NPV of consumer benefit of $0.71 billion using a 7-percent discount rate, and $1.46 billion using a 3-percent discount rate. TSL 3 provides the maximum total NPV, energy savings, and water savings.

The cumulative emissions reductions at TSL 3 are 5.76 Mt of CO_2, 13.22 thousand tons of NO_X, 2.43 thousand tons of SO_2, 0.007 tons of Hg, and 46.94 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $44 million to $606 million.

At TSL 3, the average LCC impact is a savings of $107 for light duty CPSV models, $429 for standard duty models, and $640 for heavy duty models. The simple payback period is 0.0 years for all CPSV models. The fraction of consumers experiencing an LCC net cost is 0 percent for all CPSV models.

At TSL 3, the projected change in INPV ranges from a decrease of $2.0 million to a decrease of $1.1 million. If the lower bound of the range of impacts is reached, TSL 3 could result in a net loss of up to 21.6 percent in INPV for manufacturers.

DOE tentatively concludes that at TSL 3 for commercial prerinse spray valves, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the negative impacts on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

After considering the analysis and the benefits and burdens of TSL 3, DOE tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy and water. Therefore, DOE proposes TSL 3 for commercial prerinse spray valves. The proposed amended energy conservation standards for commercial prerinse spray

valves, which are a maximum water flow rate, are shown in Table V.39.

TABLE V.39—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES

Product class	Compliance date: Month Day, 2018
	Maximum water flow rate (gpm)
Light Duty (≤5 ozf)	0.65
Standard Duty (>5 ozf and ≤8 ozf)	0.97
Heavy Duty (>8 ozf)	1.24

2. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2014$, of the benefits from operating products that meets the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[56] The value of the CO_2 reductions, otherwise known as the SCC, is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of 1 ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table V.40 shows the annualized values for commercial prerinse spray valves under TSL 3, expressed in 2014$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $41.1 per metric ton in 2015 (in 2014$), there are no increased product costs associated with the standards in the proposed rule, while the annualized benefits are $70.65 million per year in reduced product operating costs, $10.94 million in CO_2 reductions, and $1.00 million in reduced NO_X emissions. In this case, the net benefit amounts to $82.59 million per year. Using a 3-percent discount rate for all benefits and costs, and the SCC series corresponding to a value of $41.1 per metric ton in 2015 (in 2014$), there are no increased product costs associated with the standards in this proposed rule, while the benefits are $82.20 million per year in reduced operating costs, $10.94 million in CO_2 reductions, and $1.11 million in reduced NO_X emissions. In this case, the net benefit amounts to $94.25 million per year.

TABLE V.40—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 3) FOR COMMERCIAL PRERINSE SPRAY VALVES SOLD IN 2019–2048

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	69.90	65.90	72.70.
	3%	81.32	75.92	85.10.
CO_2 Reduction at $12.0/t**	5%	3.33	3.33	3.33.
CO_2 Reduction at $40.5/t**	3%	10.94	10.94	10.94.
CO_2 Reduction at $62.4/t**	2.5%	15.91	15.91	15.91.
CO_2 Reduction at $119/t**	3%	33.81	33.81	33.81.
NO_X Reduction at $2,723/ton	7%	1.00	1.00	1.00.
	3%	1.11	1.11	1.11.
Total †	7% plus CO_2 range	74 to 105	70 to 101	77 to 108.
	7%	81.85	77.84	84.64.
	3% plus CO_2 range	86 to 116	80 to 111	90 to 120.
	3%	93.37	87.96	97.15.
Costs				
Manufacturer Conversion Costs †	7%	0.16 to 0.24	0.16 to 0.24	0.16 to 0.24.
	3%	0.10 to 0.15	0.10 to 0.15	0.10 to 0.15.
Total Net Benefits				
Total ‡	7% plus CO_2 range	74 to 105	70 to 101	77 to 108.
	7%	81.85	77.84	84.64.
	3% plus CO_2 range	86 to 116	80 to 111	90 to 120.

[56] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total customer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table V.40. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, which yields the same present value.

TABLE V.40—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 3) FOR COMMERCIAL PRERINSE SPRAY VALVES SOLD IN 2019–2048—Continued

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
	3%	93.37	87.96	97.15.

* The results include benefits to consumers which accrue after 2048 from the commercial prerinse spray valves purchased from 2019 through 2048. Costs incurred by manufacturers, some of which may be incurred in preparation for the rule, are not directly included, but are indirectly included as part of incremental product costs. The extent of the costs and benefits will depend on the projected CPSV price trends, as the consumer demand for products is a function of CPSV prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and building starts from the *AEO2014* Reference case, Low Estimate, and High Estimate, respectively.

** The CO_2 values represent global values (in 2014$) of the social cost of CO_2 emissions in 2015 under several scenarios. The values of $12.2, $41.1, and $63.3 per metric ton are the averages of SCC distributions calculated using 5 percent, 3 percent, and 2.5 percent discount rates, respectively. The value of $121 per ton represents the 95th percentile of the SCC distribution calculated using a 3 percent discount rate.

† The lower value of the range represents costs associated with the Sourced Components conversion cost scenario. The upper value represents costs for the Fabricated Components scenario.

‡ Total Benefits for both the 3 percent and 7 percent cases are derived using the SCC value calculated at a 3 percent discount rate, which is $41.1 per metric ton in 2015 (in 2014$). In the rows labeled as ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values. Manufacturer Conversion Costs are not included in the Net Benefits calculations.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. 58 FR 51735 (Oct. 4, 1993). The problems that the proposed standards address are as follows.

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more efficient products are not realized because of misaligned incentives between purchasers and users. An example of such a case is when the product purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of commercial prerinse spray valves that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of social cost of carbon values.

In addition, DOE has determined that the proposed regulatory action is a ''significant regulatory action'' under section (3)(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on this rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the

rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

1. Description and Estimated Number of Small Entities Regulated

For manufacturers of commercial prerinse spray valves, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description, and are available at *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Commercial prerinse spray valves manufacturing is classified under NAICS 332919, ''Other metal valve and pipe fitting manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small businesses that could be impacted by the amended energy conservation standards, DOE conducted a market survey using public information to identify potential small manufacturers. DOE reviewed the DOE's Compliance Certification Management System (CCMS), EPA's WaterSense program database, individual company Web sites, and various marketing research tools (*e.g.,* Hoovers reports) to create a list of companies that import, assemble, or otherwise manufacture commercial prerinse spray valves covered by this rulemaking. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 11 commercial spray valve manufacturers selling commercial prerinse spray valves in the United States, 8 of which are small businesses. DOE contacted all identified commercial prerinse spray valve manufacturers for interviews. Ultimately, no manufacturers agreed to participate in an interview.

2. Description and Estimate of Compliance Requirements

The eight small domestic commercial spray valve manufacturers account for approximately 83 percent of commercial spray valve basic models currently on the market. The remaining 17 percent of commercial spray valve spray basic models currently on the market are offered by three large manufacturers.

Using basic model counts, DOE estimated the distribution of industry conversion costs between small manufacturers and large manufacturers. Using its count of manufacturers, DOE calculated capital conversion costs (under both capital conversion costs scenarios, Table VI.1) and product conversion costs (Table VI.2) for an average small manufacturer versus an average large manufacturer. To provide context on the size of the conversion costs relative to the size of the businesses, DOE presents the conversion costs relative to annual revenue and annual operating profit under the proposed standard level for the two capital conversion cost scenarios considered in the MIA, as shown in Table VI.3 and Table VI.4. The current annual revenue and annual operating profit estimates are derived from the GRIM's industry revenue calculations and the market share breakdowns of small versus large manufacturers. Due to the lack of direct market share data for individual manufacturers, DOE used basic model counts as a percent of total basic models currently available on the market as a proxy for market share.

TABLE VI.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS *

Trial standard level	Sourced components capital conversion costs scenario		Fabricated components capital conversion costs scenario	
	Capital conversion costs for typical small manufacturer (2014$ millions)	Capital conversion costs for typical large manufacturer (2014$ millions)	Capital conversion costs for typical small manufacturer (2014$ millions)	Capital conversion costs for typical large manufacturer (2014$ millions)
TSL 1	$0.00	$0.00	$0.09	$0.06
TSL 2	0.01	0.01	0.11	0.08
TSL 3	0.01	0.01	0.11	0.08
TSL 4	0.01	0.01	0.11	0.08

* Capital conversion costs are the capital investments made during the 3-year period between the publication of the final rule and the analysis compliance year of the proposed standard.

TABLE VI.2—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S PRODUCT CONVERSION COSTS *

Trial standard level	Product conversion costs for typical small manufacturer (2014$ millions)	Product conversion costs for typical large manufacturer (2014$ millions)
TSL 1	$0.12	$0.06
TSL 2	0.18	0.09
TSL 3	0.19	0.10
TSL 4	0.19	0.10

* Product conversion costs are the R&D and other product development investments made during the 3-year period between the publication of the final rule and the analysis compliance year of the proposed standard.

TABLE VI.3—COMPARISON OF CONVERSION COSTS FOR AN AVERAGE SMALL AND AN AVERAGE LARGE MANUFACTURER AT TSL 3—SOURCED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Capital conversion cost (2014$ millions)	Product conversion cost (2014$ millions)	Conversion costs/ conversion period revenue * (percent)	Conversion costs/ conversion period operating profit * (percent)
Small Manufacturer	$0.01	$0.19	9	81
Large Manufacturer	0.01	0.10	8	79

* The conversion period, the time between the final rule publication year and the analysis compliance year for this rulemaking, is 3 years.

TABLE VI.4—COMPARISON OF CONVERSION COSTS FOR AN AVERAGE SMALL AND AN AVERAGE LARGE MANUFACTURER AT TSL 3—FABRICATED COMPONENTS CAPITAL CONVERSION COSTS SCENARIO

	Capital conversion cost (2014$ millions)	Product conversion cost (2014$ millions)	Conversion costs/ conversion period revenue * (percent)	Conversion costs/ conversion period operating profit * (percent)
Small Manufacturer	$0.11	$0.19	13	120
Large Manufacturer	0.08	0.10	14	129

* The conversion period, the time between the final rule publication year and the analysis compliance year for this rulemaking, is 3 years.

At the proposed level, depending on the capital conversion cost scenario, DOE estimates total conversion costs for an average small manufacturer to range from $20,000 to $30,000 for the Sourced Components Capital Conversion Costs scenario and the Fabricated Components Capital Conversion Costs scenario, respectively. This suggests that an average small manufacturer would need to reinvest roughly 81 percent to 120 percent of its operating profit per year over the conversion period to comply with standards. Depending on the capital conversion cost scenario, the total conversion costs for an average large manufacturer range from $11,000 to $18,000 for the Sourced Components Capital Conversion Costs scenario and the Fabricated Components Capital Conversion Costs scenario, respectively. This suggests that an average large manufacturer would need to reinvest roughly 79 percent to 129 percent of its commercial prerinse spray valve-related operating profit per year over the 3-year conversion period.

As noted earlier, because of a lack of data pertaining to true market shares of individual manufacturers, DOE requests additional information and data regarding the number and market share of domestic small manufacturers of commercial prerinse spray valves, as well as small business impacts related to the proposed energy conservation standards. DOE will consider any such additional information when formulating and selecting TSLs for the final rule (section VII.E. of this notice).

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being proposed today.

4. Significant Alternatives to the Rule

The previous discussion analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to the other TSLs being considered, a regulatory impact analysis (RIA) can be found in the NOPR TSD chapter 17. For commercial prerinse spray valves, the RIA discusses the following policy alternatives: (1) No change in standard, (2) consumer rebates, (3) consumer tax credits, (4) voluntary energy efficiency targets, and (5) bulk government purchases. Although these alternatives may mitigate, to some extent, the economic impacts on small entities compared to the standards, DOE determined that the energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels. Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this rulemaking. See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the compliance date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of commercial prerinse spray valves must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for commercial prerinse spray valves, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial products, including commercial prerinse spray valves. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, appendix B, B5.1(b); 1021.410(b) and appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial product, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (Aug. 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector (Pub. L. 104–4, sec. 201 codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and TSD chapter 17, the ''Regulatory Impact Analysis,'' for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(o) and (dd), this proposed rule would amend energy conservation standards for commercial prerinse spray valves that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'', chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which sets forth energy conservation standards for commercial prerinse spray valves, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*.

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territories will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's

Web site at: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/54*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form

letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the efficiency levels selected for its analysis. Specifically, DOE requests feedback on whether cleaning performance or any other consumer utility is affected at any of the analyzed efficiency levels.

2. DOE requests comment on the recertification costs associated with complying with industry standards, which result from amended DOE standards for commercial prerinse spray valves.

3. DOE seeks additional information on industry capital and product conversion costs of compliance associated with the amended standards for commercial prerinse spray valves proposed in this notice.

4. DOE requests comment on which capital conversion cost scenario more accurately reflects the expected capital conversion costs associated with amended standards for commercial prerinse spray valves.

5. DOE requests additional information and data regarding the number and market share of domestic small manufacturers of commercial prerinse spray valves, as well as small business impacts related to the proposed energy conservation standards.

6. DOE requests comment on the probability of consumers switching product classes as a result of amended standards, as well as the current methods to account for such switching in the shipments model.

7. DOE requests comment on the appropriateness of assuming a constant manufacturer markup across all product classes and efficiency levels.

8. DOE requests comment on any variation in installation costs of commercial prerinse spray valves that is correlated to increases in commercial prerinse spray valve efficiency.

9. DOE requests comment on the estimated MSPs for each of the analyzed efficiency levels. DOE seeks input on what design options manufacturers are likely to incorporate into commercial prerinse spray valve at each of the analyzed efficiency levels, as well as their associated costs.

10. DOE requests comment on what impact, if any, the proposed energy conservation standards would have on domestic manufacturing facilities and their associated employment. DOE requests information on whether domestic manufacturers would move production overseas or source an increased number of products from foreign OEMs under the proposed standards.

11. DOE requests comment on the potential rebound effect from setting the proposed energy conservation standards for commercial prerinse spray valves. DOE requests comments on the potential technology options identified by DOE for improving the efficiency of commercial prerinse spray valves and its screening analysis used to select the most viable options for consideration in setting the proposed standards (see sections IV.A and IV.B of this notice).

12. DOE requests comment on its estimate that standards do not affect a consumer's decision to replace or repair a failed commercial prerinse spray valve. Specifically, DOE seeks any data that indicate how commercial prerinse spray valve replace versus repair decisions are impacted by increased total installed cost, increased repair cost, and energy cost savings.

13. DOE requests comments on the electric water heater thermal efficiency used in the analysis. DOE also requests additional data and references to the potential increase in efficiency that commercial electric and natural gas water heaters will achieve over time.

14. DOE requests comments on whether aerators represent a technologically feasible design option that can be applied to all commercial prerinse spray valves. Additionally DOE requests comment on what kind of utility aerated commercial prerinse spray valves provide to the consumer, and if it is any different from a commercial prerinse spray valve without an aerator.

15. DOE requests comment on the approach to delineate product classes by spray force. Specifically, DOE requests comment on whether the spray force criteria is appropriate, or whether there are any other characteristics that need to be incorporated to determine product classes.

16. DOE requests comment on the proposed product classes, the spray force bounds used to separate product classes, and the number of product classes.

17. DOE requests comment on the approach taken to use the discharge coefficient of the max-tech throughout all efficiency levels. Furthermore, DOE requests information what design decisions manufacturers make to adjust the discharge coefficients of their spray nozzles.

18. DOE requests comment on the cost analysis methodology used to create the MSP-efficiency relationship for each product class.

19. DOE requests comment on the use of 1.30 as an appropriate baseline markup for all commercial prerinse spray valves.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 17, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below.

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.51(b) is revised to read as follows:

§ 429.51 Commercial prerinse spray valves.

* * * * *

(b) Certification reports. (1) The requirements of § 429.12 are applicable to commercial prerinse spray valves; and

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information: The maximum flow rate in gallons per minute (gpm), rounded to the nearest 0.01 gallon, and the average spray force in ounce-force (ozf), rounded to the nearest 0.1 ozf.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 4. Section 431.266 is revised to read as follows:

§ 431.266 Energy conservation standards and their effective dates.

(a) Commercial prerinse spray valves manufactured on or after January 1, 2006 and before [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE ESTABLISHING AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES IN THE FEDERAL REGISTER], shall have a flow rate of not more than 1.6 gallons per minute.

(b) Commercial prerinse spray valves manufactured on or after [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE ESTABLISHING AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PRERINSE SPRAY VALVES IN THE FEDERAL REGISTER] shall have a flow rate that does not exceed the following:

Product class (spray force in ounce-force)	Maximum flow rate (gallons per minute)
Light Duty (≤5 ozf)	0.65
Standard Duty (>5 ozf and ≤8 ozf)	0.97
Heavy Duty (>8 ozf)	1.24

[FR Doc. 2015–16336 Filed 7–8–15; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 131 July 9, 2015

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 150413360–5500–01]

RIN 0648–BF02

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS' Office of Protected Resources has received a request from NMFS' Northeast Fisheries Science Center (NEFSC) for authorization to take marine mammals incidental to fisheries research conducted in a specified geographical region, over the course of five years from the date of issuance. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, specific to each geographical region and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than August 10, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0078, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov,* enter 0648–BF02 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. To help NMFS process and review comments more efficiently, please use only one method to submit comments. All comments received are a part of the public record. NMFS will generally post the comments on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) 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).

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

The public may obtain a copy of the NEFSC's 2014 application, the 2015 addendum to the application, and any supporting documents as well as a list of the references cited in this document by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Executive Summary

These proposed regulations, under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), establish frameworks for authorizing the take of marine mammals incidental to the NEFSC's fisheries research activities in a specified geographical region (the Atlantic coast region which includes the Northeast U.S. Continental Shelf Large Marine Ecosystem (Northeast LME) and a portion of the Southeast Continental Shelf Large Marine Ecosystem (Southeast LME)).

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. Depending on the research, the NEFSC's conducts the following types of research: (1) Fishery-independent research directed by NEFSC scientists and conducted onboard NOAA-owned and operated vessels or NOAA-chartered vessels; (2) fishery-independent research directed by cooperating scientists (other agencies, academic institutions, and independent researchers) conducted onboard non-NOAA vessels; and (3) fishery-dependent research conducted onboard commercial fishing vessels, with or without NOAA scientists onboard.

Purpose and Need for This Regulatory Action

We received an application from the NEFSC requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to the use of active acoustic devices in the Atlantic coast region, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. The proposed regulations would be valid from 2015 to 2020. Please see ''Background'' below for definitions of harassment.

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice and public comment, the agency makes certain findings and issues regulations. These proposed regulations would contain mitigation, monitoring, and reporting requirements.

Legal Authority for the Regulatory Action

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing the five-year regulations and any subsequent Letters of Authorization.

Summary of Major Provisions Within the Proposed Regulations

The following provides a summary of some of the major provisions within the proposed rulemakings for the NEFSC fisheries research activities in the Atlantic coast region. We have preliminarily determined that the NEFSC's adherence to the proposed mitigation, monitoring, and reporting measures listed below would achieve the least practicable adverse impact on the affected marine mammals. They include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of pelagic trawl nets, pelagic or demersal longline gear, dredge gear, fyke nets, and beach seines.
- Required implementation of standard tow durations of not more than 30 minutes to reduce the likelihood of incidental take of marine mammals.
- Required implementation of the mitigation strategy known as the ''move-on rule,'' which incorporates best professional judgment, when necessary during pelagic trawl and pelagic longline operations.
- Required compliance with applicable vessel speed restrictions.
- Required compliance with applicable and relevant take reduction plans for marine mammals.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 17, 2014, we received an adequate and complete request from the NEFSC for authorization to take marine mammals incidental to fisheries research activities. We received an initial draft of the request on February 12, 2014, followed by revised drafts on September 19 and October 1, 2014. On December 29, 2014 (79 FR 78065), we published a notice of receipt of the NEFSC's application in the **Federal Register,** requesting comments and information related to the NEFSC request for thirty days. We received comments from the Humane Society of the United States and Whale and Dolphin Conservation, which we considered in development of this proposed rule and which are available on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

The NEFSC proposes to conduct fisheries research using the following types of gear: pelagic trawl gear used at various levels in the water column, pelagic and demersal longlines with multiple hooks, bottom-contact trawls, gillnets, fyke nets, dredges, and other gear. If a marine mammal interacts with gear deployed by the NEFSC, the outcome could potentially be Level A harassment, serious injury (any injury that will likely result in mortality), or mortality. However, information upon which to base a prediction of what the outcome may be for any particular interaction is limited. Therefore, the NEFSC has pooled the number of incidents of take expected to result from different gear interactions, and we have assessed the potential impacts accordingly. The NEFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on the shoreline may also occur, in some locations within the Atlantic coast region, as a result of visual disturbance from vessels conducting NEFSC research. The proposed regulations would be valid for five years from the date of issuance.

The NEFSC conducts fisheries research surveys in the Atlantic coast region which spans from the U.S.-Canada border to Florida. This specified geographic region includes the following subareas: The Gulf of Maine, Georges Bank, Southern New England waters, the Mid-Atlantic Bight, and the coastal waters of northeast Florida. Within the specified geographic region of the Atlantic coast, the NEFSC requests authorization to take individuals of 12 species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI + Level A) and of 33 species by Level B harassment.

Contents

Description of the Specified Activity

Overview

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NEFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. For other types of surveys, cooperating scientists may conduct fishery-independent research onboard non-NOAA vessels. Finally, the NEFSC sponsors some fishery-dependent research conducted onboard commercial fishing vessels, with or without NOAA scientists onboard.

The NEFSC proposes to administer and conduct approximately 48 survey programs over the five-year period. The gear types used fall into several categories: Pelagic trawl gear used at various levels in the water column, pelagic and demersal longlines, bottom-contact trawls, gillnets, fyke nets, and other gear. The use of pelagic and bottom trawl nets, gillnets, fyke nets, and pelagic longline gears are likely to result in interaction with marine mammals. The majority of these surveys also use active acoustic devices.

The federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NEFSC is the research arm of NMFS in the greater Atlantic region of the U.S. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in Northeast and Southeast LME and provides scientific information to support the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and numerous other domestic and international fisheries management organizations.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the proposed regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the NEFSC, weather conditions, or ship contingencies. In addition, the cooperative research program is

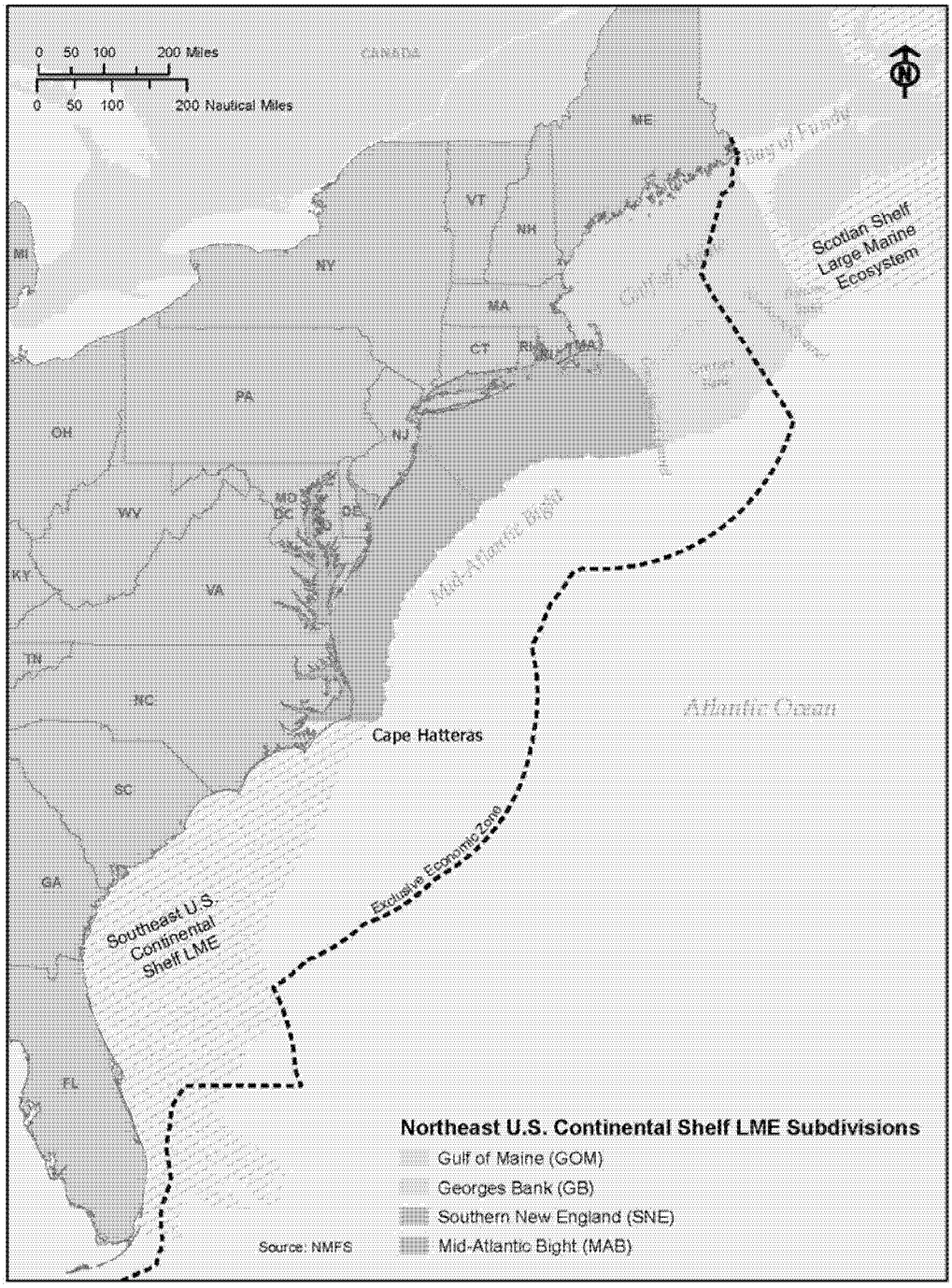
designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. NEFSC survey activity does occur during most months of the year; however, most trawl surveys occur during the spring, summer, and fall. Longline surveys occur either biannually in the spring or annually in the summer and a small number of gillnet surveys occur annually in the summer.

Specified Geographical Region

Please see Figure 1 for a map of the research areas described in this section. The NEFSC would conduct fisheries research activities off the Atlantic coast of the U.S. primarily within 200 miles of the shoreline from the U.S.-Canada border to Florida. In addition to general knowledge and other citations contained herein, this section relies upon the descriptions found in Sherman and Hempel (2009) and Wilkinson *et al.* (2009). As referred to here, productivity refers to fixated carbon (*i.e.,* g $C/m^2/yr$) which relates to the carrying capacity of an ecosystem.

BILLING CODE 3510–22–P

Figure 1 - Northeast Fisheries Science Center research areas.



Note: The NEFSC conducts the majority of research activities within the GOM, GB, SNE, and MAB. The NEFSC also conducts a small number of research activities in the U.S. Southeast Large Marine Ecosystem (SC, GA, and northeastern FL waters) not shown in this map.

BILLING CODE 3510–22–C

Atlantic Coast Region—The Atlantic coast region extends from the Gulf of Maine (to the U.S. and Canada border) past Cape Hatteras to Florida. The region is characterized by its temperate climate and proximity to the Gulf Stream, and is generally considered to be of moderately high productivity, although the portion of the region from Cape Cod to Cape Hatteras is one of the most productive areas in the world due to upwellings along the shelf break created by the western edge of the Gulf Stream. Sea surface temperatures (SST) exhibit a broad range across this region, with winter temperatures ranging from 2–20 °C in the north and 15–22 °C in the south, while summer temperatures, consistent in the south at approximately 28 °C, range from 15–27 °C in the northern portion.

The northern portion of this region (*i.e.,* north of Cape Hatteras) is more

complex, with four major sub-areas: The Gulf of Maine, Georges Bank, southern New England, and the Mid-Atlantic Bight. Cold, low-salinity water transports in the Labrador Current from the Arctic Ocean into the Gulf of Maine and exits through the Great South Channel; upwellings occur around Georges Bank. South of Cape Cod, there is strong stratification along the coast where large estuaries occur (*e.g.,* Chesapeake Bay, Pamlico Sound).

The Gulf Stream is highly influential on both the northern and southern portions of the region, but in different ways. Meanders of the current directly affect the southern portion of the Gulf Stream, where it is closer to shore, while warm-core rings indirectly affect the northern portion (Belkin *et al.,* 2009). In addition, subarctic influences can reach as far south as the Mid-Atlantic Bight, but the convergence of the Gulf Stream with the coast near Cape Hatteras does not allow for significant northern influence into waters of the South Atlantic Bight.

Gulf of Maine—The Gulf of Maine (GOM) is an enclosed coastal sea characterized by relatively cold waters and deep basins. Several geographic features bound the GOM including Brown's Bank on the east, Maine and Nova Scotia to the north, Maine, New Hampshire, and Massachusetts on the west, and Cape Cod and Georges Bank to the south. Retreating glaciers (18,000–14,000 years ago) formed a complex system of deep basins, moraines, and rocky protrusions, leaving behind a variety of sediment types including silt, sand, clay, gravel, and boulders. There exists patchy distribution of sediments on the seafloor throughout the GOM, with occurrence largely related to the bottom topography.

Oceanic circulation in the GOM exhibits a general counterclockwise current, influenced primarily by cold water masses moving in from the Scotian Shelf and offshore. Although large-scale water patterns are generally counterclockwise around the GOM, many small gyres and minor currents do occur. Freshwater runoff from the many rivers along the coast into the GOM influences coastal circulation as well. These water movements feed into and affect the circulation patterns on Georges Bank and in Southern New England.

Georges Bank—Georges Bank (GB) is a shallow, elongate extension of the northeastern U.S. continental shelf, characterized by a steep slope on its northern edge and a broad, flat, and gently sloping southern flank. The Gulf of Maine lies to the north of GB, the Northeast Channel (between GB and Browns Bank) is to the east; the continental slope lies to the south, and the Great South Channel separates GB and Southern New England to the west. Although the top of GB is predominantly characterized by sandy sediment, glacial retreat during the late Pleistocene era resulted in deposits of gravel along the northern edge of GB, and some patches of silt and clay can be found on the sea floor. The most dominant oceanographic features of GB include a weak but persistent clockwise gyre that circulates over the whole bank, strong tidal flows (mainly northwest and southeast) and strong but intermittent storm-induced currents. The strong tidal currents result in vertically well-mixed waters over the bank. The southwestern flow of shelf and slope water that forms a countervailing current to the Gulf Stream drives the clockwise GB gyre.

Mid-Atlantic Bight—The Mid-Atlantic Bight (MAB) includes the continental shelf and slope waters from GB to Cape Hatteras, NC. The retreat of the last ice sheet shaped the morphology and sediments of the MAB. The continental shelf south of New England is broad and flat, dominated by fine grained sediments (sand and silt). Patches of gravel exist in places on the sea floor, such as on the western flank of the Great South Channel.

The shelf slopes gently away from the shore out to approximately 100 to 200 kilometers (km) (62 to 124 miles (mi)) offshore, where it transforms into the continental slope at the shelf break (at water depths of 100 to 200 m (328 to 656 ft). Along the shelf break, numerous deep-water canyons incise the slope and shelf. The sediments and topography of the canyons are much more heterogeneous than the predominantly sandy top of the shelf, with steep walls and outcroppings of bedrock and deposits of clay.

The southwestern flow of cold shelf water feeding out of the GOM and off GB dominates the circulatory patterns in this area. The countervailing Gulf Stream provides a source of warmer water along the coast as warm-core rings and meanders break off from the Gulf Stream and move shoreward, mixing with the colder shelf and slope water. As the shelf plain narrows to the south (the extent of the continental shelf is narrowest at Cape Hatteras), the warmer Gulf Stream waters run closer to shore.

Southern New England—The Southern New England (SNE) subarea extends from the Great South Channel in the east to the MAB in the west. The southwestern flow of cold shelf water feeding out of the GOM and off GB dominates the circulatory patterns in this area. The SNE continental shelf is a gently sloping region with smooth topography. The shelf is approximately 100 km (62 mi) wide, and the shelf break occurs at depths of between 100 to 200 m (328 to 656 ft). The continental slope extends from the shelf break to a depth of 2 km (6,562 ft). This zone has a relatively steep gradient, and the relief is moderately smooth. The continental rise (2 to 6 km; 500 to 19,700 ft) is similar to the slope in having only gradual changes in bathymetry. However, the overall gradient of the continental rise is less than that of the continental slope (Theroux and Wigley, 1998). Sediments of the SNE subarea consist of fine-grained sand and silt. Patches of gravel exist in places on the sea floor, such as on the western flank of the Great South Channel. Currents and historic disposal of dredged material may influence water and sediment quality within the SNE.

Southeast U.S. Continental Shelf Large Marine Ecosystem: This area covers the Atlantic Ocean extending approximately 930 miles from Cape Hatteras, NC south to the Straits of Florida (Yoder, 1991). The continental shelf in the region reaches up to approximately 120 miles offshore. The Gulf Stream Current influences the region with minor upwelling occurring along the Gulf Stream front. The area is approximately 115,000 square miles, includes several protected areas and coral reefs (Aquarone, 2008); numerous estuaries and bays, such as the Albemarle-Pamlico Sound, nearshore and barrier islands; and extensive coastal marshes that provide valuable ecosystem services and habitats for numerous marine and estuarine species. A six- to 12-mile wide coastal zone is characterized by high levels of primary production throughout the year, while offshore, on the middle and outer shelf, upwelling along the Gulf Stream front and intrusions from the Gulf Stream cause seasonal phytoplankton blooms. Because of its high productivity, this sub-region supports active commercial and recreational fisheries (Shertzer *et al.* 2009).

Detailed Description of Activities

The federal government has a trust responsibility to protect living marine resources in waters of the United States. These waters extend to 200 nautical miles (nmi) (370 km; 230 mi) from the shoreline and include the U.S. Exclusive Economic Zone (EEZ). The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international

waters outside of the U.S. EEZ (*i.e.,* the high seas). To carry out its responsibilities over U.S. and international waters, Congress has enacted several statutes authorizing certain federal agencies to administer programs to manage and protect living marine resources. Among these federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources under statutes including the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Atlantic Coastal Fisheries Cooperative Management Act (ACA), and the Atlantic Striped Bass Conservation Act.

Within NMFS, six Regional Fisheries Science Centers direct and coordinate the collection of scientific information needed to inform fisheries management decisions. Each Fisheries Science Center is a distinct entity and is the scientific focal point for a particular region. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the Atlantic coast region from Maine to northeast Florida. The NEFSC provides scientific information to support the Mid-Atlantic Fishery Management Council and other domestic fisheries management organizations.

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NEFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. For other types of surveys, cooperating scientists may conduct fishery-independent research onboard non-NOAA vessels. Finally, the NEFSC sponsors some fishery-dependent research conducted onboard commercial fishing vessels, with or without NOAA scientists onboard. The NEFSC proposes to administer and conduct approximately 48 survey programs over the five-year period.

The gear types used fall into several categories: Pelagic trawl gear used at various levels in the water column, pelagic and demersal longlines, bottom-contact trawls, anchored sinking gillnets, and other gear. The use of pelagic and bottom trawl nets, gillnets, fyke nets, and longline gears are likely to result in interaction with marine mammals. The NEFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Additionally, a small set of research activities along the Penobscot River estuary in Maine have the potential to behaviorally disturb marine mammals due to the physical presence of researchers near haulout areas.

Most of the vessel-based surveys use active acoustic devices. The NEFSC may conduct surveys aboard research vessels (R/V), including the NOAA Ship R/V *Henry B. Bigelow,* R/V *Gordon Gunter,* R/V *Pisces,* R/V *Nauvoo,* R/V *Harvey,* R/V *Chemist,* R/V *Resolute,* R/V *Hassler,* R/V *C.E. Stillwell,* and R/V *Gloria Michelle;* aboard R/V and fishing vessels (F/V) owned and operated by cooperating agencies and institutions including the F/V *Robert Michael,* F/V *Darana R,* R/V *Hugh R. Sharp,* and F/V *Eagle Eye II;* or aboard charter vessels.

In the following discussion, we summarily describe various gear types used by the NEFSC and then describe specific fisheries and ecosystem research activities conducted by the NEFSC within the Atlantic coast region. This is not an exhaustive list of gear and/or devices that the NEFSC may use, but it is representative of gear categories and is complete with regard to all gears with potential for interaction with marine mammals. Additionally, we describe the relevant active acoustic devices that the NEFSC commonly uses in its survey activities in a subsequent section. Please see Appendix A of the NEFSC's LOA application and draft programmatic EA for more detailed descriptions and schematic diagrams of the research gear types.

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope.

The trawl net is usually deployed over the stern of the vessel and attached with two cables (or warps) to winches on the deck of the vessel. The cables are played out until the net reaches the fishing depth. Commercial trawl vessels travel at speeds of 2 to 5 knots (kt) (2.3 to 5.7 miles per hour (mph)) while towing the net for time periods up to several hours, whereas most NEFSC trawl surveys involve slower tow speeds from 1.4 to 4 kt (1.6 to 4.6 mph) with shorter tow durations from 15 to 60 minutes (min). The duration of the tow depends on the purpose of the trawl, the catch rate, and the target species. At the end of the tow, personnel retrieve the net and empty the contents of the cod end onto the deck. For research purposes, the speed and duration of the tow and the characteristics of the net must be standardized to allow meaningful comparisons of data collected at different times and locations. Active acoustic devices (described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design. Most NEFSC research trawling activities use both pelagic (surface or mid-water) trawls, which are designed to operate at various depths within the water column, as well as bottom trawls, which are designed to capture target species at or near the seafloor.

1. 4-Seam, 3-Bridle Bottom Trawl: Several NEFSC research programs use a 4-seam, 3-bridle bottom trawl, manufactured using 12-centimeter (cm) (5-inch (in) and 6-cm (2 in) mesh. The effective mouth opening of the 4-seam, 3-bridle bottom trawl is approximately 70 square meters (753 square ft) (14 meter spread by 5 meters high; 46 ft by 16 ft), spread by a pair of trawl doors. The footrope of the trawl is 27 m (89 ft) in length, ballasted with heavy rubber discs or roller gear. The head rope is approximately 24 m (79 ft) in length supported by 60 Nokalon #508 eight-inch center-holed, orange trawl floats. For certain research activities, the cod end may have a sewn-in liner to minimize the loss of small fish.

2. High-Speed Mid-water Rope Trawl: Several NEFSC research programs use the Gourock High Speed Midwater Rope Trawl (HSMRT) for fisheries acoustics surveys. The HSMRT employs a four-seam box design with a 5-m (174-ft) headrope, footrope, and breastlines. The mouth opening of the HSMRT is approximately 13.3 meters vertical and 27.5 meters horizontal. Once personnel deploy the net, they can change in the

position of the net in the water column by increasing or decreasing the speed of the vessel, or by bringing in or letting out trawl wire. NEFSC also uses active acoustics to monitor the ship and net positions and status. Pelagic trawl nets do not have any contact with the seafloor because they do not have bobbins or roller gear, which are often used to protect the foot rope of a bottom trawl net when it contacts the seafloor.

Gillnets—Gillnets consist of vertical netting held in place by floats and weights to selectively target fish of uniform size depending on the netting size. Typical gillnets consist of monofilament, multi-monofilament, or multifilament nylon constructed of single, double, or triple netting/paneling of varying mesh sizes, depending on their use and target species. A specific mesh size will catch a target species of a limited size range, allowing this gear type to be very selective.

1. Anchored sinking gillnets: A few NEFSC research program use anchored sinking gillnets which are fixed to the ocean floor or at a set distance above the bottom (typically in the lower one-third of the water column), held in place by anchors or ballasts with enough weight to counteract the buoyancy of the floats used to hold up the net. NEFSC survey activities use gillnets that range from 15 to 99 m (50 to 325 ft) in length, 2 to 3 m (8 to 10 ft) in height, with mesh sizes from 16 to 30 cm (6.5 to 12 in). In some cases, the gillnet configuration may consist of 10-panel strings up to 914 m (3,000 ft) in length. Gillnets used in NEFSC research programs use weak links of particular strength and locations on the gear, as specified by the Atlantic Large Whale Take Reduction Plan in order to minimize the risk of large whale entanglement in the gear. Soak times for long-term surveys are typically 3 hours, but short-term cooperative research projects have used soak times up to 96 hours.

Pound nets—A pound net is a stationary fishing device. It consists of poles or stakes secured into the bottom with attached netting. The structure includes a pound with a netting floor, a heart-shaped enclosure, and a straight wall or leader. Pound nets are generally set close to shore, and the leader is set perpendicular to the shore to guide migrating fish into the pound. The leader is a wall of mesh webbing that extends from the sea floor to approximately the sea surface and may be up to several hundred meters in length. Fish swimming laterally along the shoreline encounter the leader and generally turn towards deeper water to circumvent the obstruction. The heart and pound portions of the net located at the deep end of the leader, non-selectively direct and trap the fish to prevent escape. The pound is usually a rectangular enclosure constructed of small mesh and is approximately 6 to 13 m (20 to 43 ft) long.

Longlines—Longline vessels fish with baited hooks attached to a mainline (or groundline). The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Personnel attach hooks to the mainline by another thinner line called a gangion. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. Depending on the fishery, longline gear can be deployed on the seafloor (bottom longline), in which case weights are attached to the mainline, or near the surface of the water (pelagic longline), in which case buoys are attached to the mainline to provide flotation and keep the baited hooks suspended in the water. Fishers often use radar reflectors, radio transmitters, and light sources to determine the location of the longline gear prior to retrieval.

A commercial pelagic longline can extend over 100 km (62 mi) long and have thousands of hooks attached, although longlines used for research surveys are shorter. The pelagic longline gear used for NEFSC research surveys typically use 100 to 400 hooks attached to steel or monofilament mainline that is approximately 3 to 16 km (2 to 10 mi) long. One exception is a small-scale survey that typically uses 25 to 50 hooks attached to a 305-m (1,000-ft) mainline.

For NEFSC research activities, the length of the gangion and the distance between each gangion depends on the purpose of the fishing activity. There are no internationally recognized standard measurements for hook size, and a given size may be inconsistent between manufacturers. Fishers reference larger hooks, such as those used in longlining, by increasing whole numbers followed by a slash and a zero as size increases (*e.g.,* 1/0 up to 20/0). The numbers represent relative sizes, normally associated with the gap (the distance from the point tip to the shank). Because pelagic longline gear does not anchor to the seafloor, it floats freely in the water and may drift considerable distances between the time of deployment and the time of retrieval. The time period between deployment and retrieval of the longline gear is the soak time, which is an important parameter for calculating fishing effort. For commercial fisheries the goal is to optimize the soak time in order to maximize catch of the target species while minimizing the bycatch rate and minimizing damage to target species that may result from predation by sharks or other predators.

1. Yankee swordfish-style pelagic longline gear: This gear configuration consists of 5/16-inch tarred nylon mainline with 7- to 10-m (24- to 33-ft) gangions composed of 4 m (13 ft) of 3/16-inch nylon, 2 m (7 ft) of 3/32 inche stainless steel leader, and a #40 Japanese tuna hook. For research purposes, researchers bait the hooks with whole Atlantic mackerel (*Scomber scombrus*) attached at 52-m (170-ft) intervals. Researchers attach floats at five hook intervals on 12-m (40-ft) float lines. Flag buoys (*i.e.,* high flyers) are located at each end of the gear.

2. Florida commercial-style bottom longline gear: This gear configuration consists of consists of 940-pound test monofilament mainline with 4-m (12-ft) gangions made of 730-pound test monofilament with a longline clip at one end and a 3/0 shark hook at the other. Researchers bait the hooks with chunks of spiny dogfish (*Squalus acanthias*) and attach them to the mainline at roughly 18-m (60-ft) intervals. Researchers attach 5-pound weights at 15-hook intervals and 15-pound weights and small buoys at 50-hook intervals. To ensure that the gear fishes on the bottom, researchers place 20-pound weights at the beginning and end of the mainline after deploying a length of line two to three times the surveyed water depth. Researchers attach a 20-ft flag buoy (*i.e.,* high flyers) equipped with radar reflectors and flashing lights to each end of the mainline. The flag buoys used for bottom longline gear use long buoy lines to allow the weighted groundline to rest on the seafloor while the attached buoys float on the surface to enable gear retrieval.

3. Anchored bottom longline gear: A few NEFSC research programs use two types of anchored bottom longline gear: One for targeting small juvenile sharks and the other for targeting large juveniles and adult sharks. Researchers use previously frozen Atlantic mackerel or herring (*Clupea harengus*) as bait for both juvenile and large juvenile/adult shark longline gear.

The juvenile gear consists of 305-m (1,000 ft) of quarter-inch braided nylon mainline with at least 61 m (200 ft) of additional line on each side for scope, and 50 gangions attached at 6-m (20-ft) intervals, comprised of 12/0 Mustad circle hooks with barbs depressed, 20 inches of 1/16 stainless cable, and 40 inches of quarter-inch braided nylon line with 4/0 longline snaps.

The large juvenile/adult survey uses the same type and length of mainline as the juvenile gear with 25 gangions

attached at 12-m (40-ft) intervals, comprised of 16/0 Mustad circle hooks with barbs depressed, 20 inches of 3/32 stainless cable, and 80 inches of 3 mm clear monofilament with 4/0 longline snaps.

Fyke nets—Fyke nets are bag-shaped nets held open by frames or hoops. The fyke nets used in NEFSC survey activities consist of successively smaller plastic coated square metal tube frames that are covered with mesh net (0.6 centimeters for small, 1.9 centimeters for large). Two 9.1-m wings extend from the opening of each fyke at an angle of approximately 30 degrees. The wings have a weighted footrope and floats on the head-rope and are the same height (either 0.91 m or 1.83 m high; 2.9 or 6 ft high) and comprised of the same net mesh as the fyke net itself. Each net has two throats tapering to a semi-rigid opening of 12.7 centimeters for the small net and 45.7 centimeters for the larger net. The fish pass through these throats before entrapment in the live box. For the large fyke, the final compartment of the net consists of a rigid framed live box (2 x 2 x 3 m; 6.5 x 6.5 x 9.8 ft) at the surface for removal of catch directly from above without having to retrieve the entire net. The NEFSC attaches a marine mammal excluder device to the outer-most throat of the larger fyke to stop marine mammals from entering the net which could lead to incidental entrapment. The exclusion device consists of a grate constructed of aluminum bars. The size of the opening is approximately 14 centimeters, which effectively prohibits marine mammals from entering the net.

Dredges—This is a fishing method where fishers drag a dredge across the sea floor, either scraping or penetrating the bottom. A typical dredge consists of a mouth frame with an attached collection bag. Scraping dredges collect target species (*e.g.,* oysters, scallops, clams, and mussels) in the top layer of seafloor sediment with rakes or teeth that scoop up the substrate. Penetrating dredges use pressurized water jets to chase animals out from beneath muddy or rocky bottom substrate and into the collection bag.

1. New Bedford-type dredge: The NEFSC uses this type of dredge primarily to harvest sea scallops in the Georges Bank and Mid-Atlantic scallop fisheries. The forward edge of the New Bedford-type dredge uses a cutting bar to create turbulence that drives scallops from the sediment into the bag of the dredge. The bag consists of metal rings which drag on the seafloor. Towing times for commercial scallop dredges are highly variable, depending on the size of the bag and the density of sea scallops at the fishing location. This gear also includes seasonal modifications (*i.e.,* the addition of a chain mat between the sweep and the cutting bar) to reduce the potential interactions with marine turtles.

2. Hydraulic dredge: This type of dredge uses pressurized water jets to wash Atlantic surfclams (*Spisula solidissima*) and Ocean quahogs (*Arctica islandica*) out of the seafloor. The water jets penetrate the sediment in front of the dredge and help to propel the dredge forward. A blade on the front of the dredge then lifts the clams separated from the sediment and guides them into the body (*i.e.,* cage) of the dredge. The hydraulic dredges used for the NEFSC surfclam/ocean quahog survey use a 3.8-m (12.5-ft) blade towed at approximately 1.5 kt (1.7 mph). During survey tows, researchers deploy the dredge at depth for approximately 5 min.

3. Naturalist dredge: NEFSC surveys use this gear to obtain samples of megafaunal species (*e.g.,* oysters, crabs, mussels, whelks). The Naturalist dredge is typically small (1 m (3 ft) wide) and towed along the seafloor over a relatively short distance (9 to 61m; 30 to 200 ft) in order avoid overfilling the dredge and losing part of the sample. NEFSC researchers manually pull out all megafauna from the dredge samples and process them on deck after retrieving the dredge. Due to the small size of the Naturalist dredge and the limited deployment periods, interactions with protected species would be minimal. However, dredges do disturb bottom habitats.

Traps/Pots—Traps and pots are submerged, three-dimensional wire or wood devices that permit organisms to enter the enclosure but make escape extremely difficult or impossible. Researchers use secured bait in the trap to lure organisms inside, where they wait to retrieve the catch and re-bait the traps.

1. Fish/lobster pots: Several NEFSC and cooperative research surveys use fish or lobster pots to selectively capture species for research, tagging studies, and sample collection. Fish pots select for particular species by configuring the entrances, mesh, and escape tunnels (vents) to allow retention of the target species, while excluding larger animals, and allowing smaller animals to escape from the pot before retrieval. In many instances, animals remain alive in the pot until retrieval, making pots a preferred method for collecting some species for tagging or mark/recapture studies. The NEFSC research set aside program targeting black sea bass (*Centropristis striata*) in southern New England and Mid-Atlantic waters uses unvented pots 43.5 inches long, 23 inches wide, and 16 inches high made with 1.5 inch by 1.5 inch coated wire mesh, a single mesh entry head, and a single mesh inverted parlor nozzle. Other NEFSC research activities targeting various finfish and shellfish species use different pot configurations depending on the species of interest.

2. Rotary screw trap (RST): This type of gear enables live capture of smolts emigrating from several coastal rivers, including the Narraguagus, Penobscot, Pleasant, and Sheepscot Rivers. The NEFSC uses RSTs to estimate smolt populations, enumerate and sample smolts (and other co-occurring species), and to better understand factors that limit smolt production and migration success.

This gear type is also a platform for telemetry studies that provides valuable data on smolt behavior and migratory success. Researchers position the trap within water channels to maximize fish capture. Fish enter the trap through the large end of a revolving and half-submerged screen cone suspended between two pontoons. The NEFSC uses RSTs with different size openings (1.2, 1.5, and 2.4 m; 4, 5, and 8 ft models). As the river current turns the cone, the fish travel downstream into a live car and remain confined in river water until sample retrieval. Researchers tend to the traps on a daily basis and monitor river conditions frequently. RSTs require adequate water depth and current to rotate the cone for most effective fishing. RSTs can operate in high flow conditions, although they sometimes become jammed with debris. RSTs have a hubodometer, a device that records the number of revolutions of the cone to estimate catch per unit of effort.

Other towed nets—NEFSC surveys utilize various small, fine-mesh, towed nets designed to sample small fish and pelagic invertebrates. The NEFSC broadly categorizes these nets as small trawls (distinct from large trawl nets due to the discountable potential for interaction with marine mammals; see ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'') and plankton nets.

1. The Isaacs-Kidd midwater trawl (IKMT): The NEFSC uses this gear to collect deepwater biological specimens larger than those taken by standard plankton nets. The mouth of the net is approximately 1.5 by 2 m (5 by 7 ft), and is attached to a wide, V-shaped, rigid diving vane that keeps the mouth of the net open and maintains the net at depth for extended periods. The IKMT is a long, round net approximately 6.5 m (21 ft) long, with a series of hoops

decreasing in size from the mouth of the net to the codend, which maintain the shape of the net during towing (Yasook *et al.,* 2007). Because of the high level of drag exerted by the net in the water, fishers must tow trawls at speeds of 1 to 2 kt (1.1 to 2.3 mph). Conversely, researchers can tow an IKMT at speeds as high as 5 kt (8 mph).

2. The Multiple Opening/Closing Net and Environmental Sensing System (MOCNESS): The NEFSC uses this gear for specialized zooplankton surveys. The system uses a stepping motor to sequentially control the opening and closing of the net. The MOCNESS uses underwater and shipboard electronics to control the device which continuously monitor the functioning of the nets, frame angle, horizontal velocity, vertical velocity, volume filtered, and selected environmental parameters, such as salinity and temperature.

3. Tucker trawl: The NEFSC uses this type of mid-water zooplankton trawl to study pelagic fish and zooplankton. The Tucker trawl, similar to the MOCNESS, consists of a stepping motor that opens and closes a series of nets sequentially without retrieving the net from the fishing depth. The Tucker trawl used for NEFSC research surveys uses 333 micron plankton nets with 1 by 1.4 m (3.2 by 4.6 ft) openings. The nets operate at a 45-degree angle during fishing, which results in an effective fishing area of 1 square m (10.8 square ft). Researchers use this gear for deep oblique tows where they can sequentially operate up to three replicate nets by a double release mechanism. The NEFSC typically equips the trawl with a full suite of instruments, including inside and outside flow meters, conductivity, temperature, and depth (CTD) instruments, and pitch sensor.

4. Beam trawl: A beam trawl is a type of bottom trawl that uses a wood or metal beam to hold the net open as researchers tow it along the sea floor. The beam holds open the mouth of the net eliminating the need for trawl doors. Beam trawls are generally smaller than other types of bottom trawls. Commercial beam trawls have beam lengths of up to 12 m (39.4 ft); while beam trawls for research purposes typically use beams 2 to 4 m (6.6 to 13.1 ft) in length.

Sediment grab sampler—The NEFSC uses sediment grab samplers to collect sediments and assess populations of benthic fauna from the seafloor.

1. Van Veen sediment grab sampler: The Van Veen grab sampler consists of a hinged pair of scoops deployed over the side of the vessel and lowered to the seafloor on a cable. The scoops are approximately 31 centimeters wide to allow sampling of a 0.1 square meter area of the seafloor. Sharp cutting edges on the bottoms of the scoops enable them to penetrate up to about 40 centimeters into the sediment. The grab sampler may be galvanized, stainless steel, or Teflon-coated. Prior to deployment, personnel lock the sampler with the safety key in place, deploy it over the side of the vessel, and remove the safety key while slowly lowering it to the bottom. After making bottom contact (indicated by slack in the cable), personnel slowly increase the tension on the cable which causes the scoops to close. Once the sampler is back on board, personnel open the top doors to inspect the sediment sample.

Plankton nets—The remainder of nets described here are plankton nets, which usually consist of fine mesh attached to a weighted frame which spreads the mouth of the net to cover a known surface area in order to sample plankton and fish eggs from various parts of the water column.

1. Bongo nets: The NEFSC uses Bongo nets to collect zooplankton for research purposes only. Bongo nets, which consist of a bucket attached to the codend of the net, move through the water at an oblique angle to collect plankton samples over a range of depths. The Bongo nets used by the NEFSC have openings 61 cm in diameter and employ either a 333-or 505-micrometer (µm) mesh. The nets are 3 m (9.8 ft) in length with a 1.5 m (4.9 ft) cylindrical section, coupled to a 1.5 m (4.9 ft) conical portion that tapers to a detachable codend constructed of 333-µm or 505-µm nylon mesh. During each plankton tow, personnel deploy the bongo nets to a depth of approximately 210 m (689 ft) and then retrieve the net at a controlled rate so that the volume of water sampled is uniform across the range of depths. In shallow areas, NEFSC researchers may adjust the sampling protocol to prevent contact between the bongo nets and the seafloor.

Instruments—Research vessel surveys are generally conducted 24-hours a day when the vessels are at sea. NEFSC research surveys provide opportunities to collect environmental information (*e.g.,* temperature, salinity, pollution levels, etc.) and to allow other researchers to piggyback on surveys to collect a host of environmental data not directly related to the stock assessment. All research vessel surveys conducted by the NEFSC collect and archive an extensive array of environmental measurements and usually have a shopping list of samples to obtain for researchers at academic institutions, other government agencies, and the private sector.

1. Conductivity, temperature, and depth profilers (CTD): A CTD profiler is the primary research tool for determining chemical and physical properties of seawater. A shipboard CTD consists of a set of small probes attached to a large (1 to 2 m in diameter) metal rosette wheel. Personnel lower the rosette through the water column on a cable, and researchers observe the CTD data in real time via a conducting cable connecting the CTD to a computer on the ship. The rosette also holds a series of sampling bottles that personnel can trigger to close at different depths in order to collect a suite of water samples used to determine additional properties of the water over the depth of the CTD cast. A standard CTD cast, depending on water depth, requires two to five hours to complete.

A computer plots data from a suite of samples collected at different depths (*i.e.,* a depth profile) with the value of the variable of interest on the x-axis and the water depth on the y-axis. Researchers compare depth profiles for different variables in order to glean information about physical, chemical, and biological processes occurring in the water column. Conductivity measurements serve as a proxy for salinity expressed in practical salinity units representing the sum of the concentrations of several different ions. A high-sensitivity thermistor housed inside a thin-walled stainless steel tube measures the temperature. The thermistor measures resistance as personnel lowers the CTD profiler through the water column. This gives a continuous profile of the water temperature at all water depths. An electronic pressure sensor continuously monitors the depth of the CTD sensor array. Salinity, temperature, and depth data measured by the CTD instrument are essential for characterization of seawater properties.

2. Expendable bathythermographs (XBT): The NEFSC uses XBTs to provide ocean temperature versus depth profiles. A standard XBT system consists of an expendable probe, a data processing/recording system, and a launcher. An electrical connection between the probe and the processor/recorder is made when the canister containing the probe is placed within the launcher and the launcher breech door is closed. Following launch, wire de-reels from the probe as it descends vertically through the water. Simultaneously, wire de-reels from a spool within the probe canister, compensating for any movement of the ship and allowing the probe to freefall

from the sea surface unaffected by ship motion or sea state.

The XBT probes consist of a metal weight surrounding a temperature probe, attached to a copper wire that conducts the signal to the vessel. The copper wire is protected within a plastic housing. Probes are generally launched from the leeward side of the vessel and as far aft as possible. Launching from these locations helps obtain high reliability and minimizes the chances that the fine copper probe wire will come in contact with the ship's hull which may cause spikes in the data or a catastrophic wire break. A portable shipboard data acquisition system records, processes, and interprets the data the probes collect.

XBT drops occur at predetermined times along with surface chlorophyll sampling. Opportunistic drops may also occur. Typically, three XBT drops are made per survey day. XBT drops may be repeated if the displayed profile does not show a well-defined mixed layer and thermocline. Deep Blue probes are preferred, as they survey to a depth of 760 m and take approximately two minutes per drop. Probes are launched using a hand-held launcher. As the XBT probes are expendable, they are not retrieved and are left on the seafloor after data collection.

3. Remotely operated vehicles (ROV): The NEFSC maintains and deploys several ROVs. They use ROVs to count fish and shellfish, photograph fish for identification, and provide views of the bottom for habitat-type classification studies via still and video camera images. Precise georeferenced data from ROV platforms also enables SCUBA divers to use bottom time more effectively for collection of brood stock and other specimens.

The NEFC operates a Seabed Observation and Sampling System (SEABOSS) designed for rapid, inexpensive, and effective collection of seabed images and sediment samples in coastal/inner-continental shelf regions. Researchers use the observations from video and still cameras, along with sediments collected in the sampler, in conjunction with geophysical mapping surveys to provide more comprehensive interpretations of seabed character. The SEABOSS incorporates two video cameras; a still camera, a depth sensor, light sources, and a modified Van Veen sediment sampler. These components attach to a stainless steel frame that personnel deploy deployed through an A-frame, using a power winch, as the SEABOSS weighs 300 pounds. The SEABOSS frame has both a stabilizing fin capable of orienting the system while it drifts, and base plates that prevent over-penetration when the system rests on the sea floor. A modified Van Veen sampler takes undisturbed samples in the vicinity of the system. The system begins imaging the sea floor with a 35-millimeter camera before touching bottom, at 30 inches height above bottom. The system annotates scale, time, and exposure number on each image. A downward-looking video camera overlaps the field of view of the still camera. The second video camera, mounted in a forward-looking orientation, provides an oblique sea floor view and enables a shipboard operator to monitor for proper tow-depth and for obstacles to the SEABOSS while operations are underway.

Summary of Planned Research

Next we describe the long-term surveys and research activities planned by the NEFSC and its research partners in the Atlantic coast region. The NEFSC anticipates that these long-term surveys would likely continue during the next five-year period, although not necessarily every year. Please see Table 1.1 of the NEFSC's application for a detailed summary of these surveys.

1. *Benthic Habitat Survey:* The benthic habitat survey occurs annually during the summer (Jul) or fall (Oct) in an area that extends from the Hudson Canyon to the Georges Bank. It assesses seafloor disturbance by commercial fishing and changes as the benthic ecosystem recovers from chronic fishing impacts and collects data on seasonal migration, bottom data for mapping and indication of climate change through species shifts. Survey operations are on a 24-hour schedule.

The protocol for the July Hudson Canyon survey includes deploying a 4-seam, 3-bridle bottom trawl at approximately 2.5 kt (2.9 mph) for 30-minute tows at a target depth. The survey averages 54 tows per year and requires about 20 days at sea (DAS) using the R/V *H.B. Bigelow,* R/V *G. Gunter,* or R/V *Pisces.* The survey also uses a CTD profiler and rosette water sampler, Brooke Ocean moving vessel CTD, plankton light trap, Van Veen sediment grab, beam trawl, naturalists dredge, and SeaBoss benthic camera vehicle. Additional protocols include the use of use of multi-frequency active acoustics (output frequencies: 18, 38, 120, 200, 400, and 450 kilohertz (KHz).

2. *Changes in the Community Structure of Benthic Fishes:* This survey occurs annually during the summer (Jul) in the Hudson River Estuary, NY. It quantifies the abundance and distribution of benthic associated fishes of the Hudson River Estuary ecosystem. Survey operations are on a 24-hour schedule.

The protocol for the survey includes deploying a 16-ft bottom trawl net towed at approximately 2.5 kt for 5 minutes. The survey averages 176 trawls annually and requires approximately 20 DAS using the R/V *Nauvoo.* Protocols also include the deployment of a Yellow Spring YSI 6000 water quality meter and Kemmerer water sampling bottles. Additional protocols include the use of use of multi-frequency active acoustics: (Output frequencies: 38 and 120 kHz).

3. *Fish Collection for Laboratory Experiments:* This survey occurs annually, as needed throughout the year in the New York Bight and in Sandy Hook Bay, NJ. Survey operations are on a 24-hour schedule. It catches high-quality fish for laboratory experiments.

Protocols include deployment of a 16-ft or 30-ft bottom trawl nets towed at approximately 2.5 kt for 10 min, or hook and line fishing. The number of tows varies depending on scientific need, typically enough trawls to capture 10 to 60 specimens. The survey requires approximately 10 DAS on the R/V *Nauvoo,* R/V *Harvey,* or R/V *Chemist.* Additional protocols include the deployment of a Sea Cam video sled, CTD, Tucker plankton net, an Acoustic Doppler Current Profiler (ADCP, output frequencies of 38 and 120 kHz), Ponar grab, and Kemmerer water sampling bottles.

4. *Habitat Characterization:* This survey occurs annually throughout the year in Sandy Hook Bay, Barnegat Bay, and offshore New York and New Jersey. Survey operations are on a 24-hour schedule. It characterizes and maps coastal marine habitats and living marine resources in waters and wetlands around New York and New Jersey.

The NEFSC conducts the survey under the terms of a Memorandum of Understanding with the New Jersey Sea Grant Consortium. Protocols include deploying a 16-ft or 30-ft bottom trawl net (simple Memphis net and twine ''shrimp trawl) towed at approximately 2.5 kt for 10 min. The survey requires about 60 tows per year and approximately 30 DAS on the R/V *Nauvoo* or R/V *Resolute.* Researchers may also deploy of a Sea Cam 5000 12v video cam, CTDs, YSI 6000 water quality meter, Tucker plankton net, Kemmerer bottle, and Ponar grab. Additional protocols include the use of multi-frequency active acoustics (38 and 120 kHz) and an ADCP (600 kHz).

5. *Habitat Mapping Survey:* This survey occurs annually during the summer in the ocean shelf off the Maryland coast. It maps shallow reef

habitats of fisheries resource species, including warm season habitats of black sea bass, and to locate sensitive habitats (*e.g.,* shallow temperate coral habitats) for habitat conservation. Survey operations are on a 24-hour schedule.

Survey protocols include deploying a 4-seam, 3-bridle bottom trawls towed at 3.0 kts for 30 minutes at target depth. The survey requires about 54 tows per year and approximately 11 DAS using the R/V *Hassler.* Additional protocols include deployment of a CTD Profiler, Brooke Ocean Moving Vessel CTD profiler, split beam sonar, plankton light trap, beam trawl (tow speed 2.0 kt for 20 min), a naturalists dredge (tow speed 2 to 3 kt for 1 minute at depth), SeaBoss benthic camera vehicle, and continuous use of four multi-frequency acoustic devices with output frequencies of 18, 38, 120, 200, 400, and 450 kHz.

6. *Living Marine Resources Center Survey:* The survey is conducted annually in January from Cape Hatteras to New Jersey. It determines distribution, abundance, and recruitment patterns for multiple species. The survey operates on 24-hour schedule.

Protocols include deployment of a 4-seam, 3-bridle bottom trawl towed at 3 kt for 30 min. The survey averages 25 tows per year and requires about 11 DAS using the R/V *H. B. Bigelow* or a similar vessel type. Protocols also include the use of a 2-m wide beam trawl at 2 kt for 20 min at depth, Van Veen sediment grab, and CTD profiler. Additional protocols include the continuous use of multi-frequency active acoustics (output frequencies: 18, 38, and 120 kHz).

7. *Massachusetts Division of Marine Fisheries (MADMF) Bottom Trawl Surveys:* The MADMF spring (May) and fall (Sep) annual bottom trawl surveys have been conducted since 1978 during daylight hours within 5 nm of the Massachusetts coast, thus includes some federal waters, from the Rhode Island to New Hampshire borders. It tracks abundance of mature and juvenile fishes.

The protocol includes deploying an otter trawl at approximately 2.5 kt for 20 min. The surveys average 206 tows per year and require about 30 to 36 DAS using the R/V *G. Michelle.*

The trawl has a 39 ft headrope and 51 ft footrope, rigged with a 3.5 inch rubber disc sweep and has a half inch stretched nylon liner at the cod end to retain small fish. The net spread is 72 in by 40 in 325 pound wooden trawl doors connected to the net via 63 ft ⅜ in chain bottom legs and 60 ft ⅜ in wire top legs.

8. *Northeast Area Monitoring and Assessment Program (NEAMAP) Near Shore Trawl Program:* The survey occurs annually from April–June and October–December in two segments during daylight hours. The northern segment extends from the U.S.-Canada border to New Hampshire-Massachusetts from shore to the 300 ft depth, whereas the southern segment extends from Montauk, New York to Cape Hatteras from 20 to 90 ft depth. This program collects data in support of single and multispecies stock assessments in the mid-Atlantic.

The protocol in the northern segment includes deploying a modified Gulf of Maine shrimp trawl, typically used by commercial vessels in Maine and New Hampshire, at approximately 2.2 kt for 20 min. The survey averages 200 tows per year and requires approximately 30 to 50 DAS using the F/V *R. Michael.* In the southern segment a 4-seam, 3-bridle bottom trawl is deployed at approximately 3.0 kt for 20 min. The survey averages 300 tows per years and requires approximately 30–50 DAS using the F/V *Darana R.* The net has a 58-ft headrope, 70-ft footrope, 24-ft siderope, with 1 inch poly stretch mesh, and #7.5 Bison doors.

9. *Northeast Observer Program (NEFOP) Observer Bottom and Mid-water Trawl Training Trips:* This is a certification training program for new NEFOP Observers. It occurs from Maine to North Carolina annually, using one-day trips throughout the year as needed, totaling about 18 DAS on contracted commercial fishing vessels. The protocol includes deployment of a commercial fishing net (net size, tow speed, and other details vary depending on the vessel and gear used). The trips do not use active acoustic gear as part of the training and approximately 108 tows may occur annually.

10. *Northern Shrimp Survey:* The NEFSC conducts these surveys annually in July in the Gulf of Maine during daylight hours. It determines the distribution and abundance of northern shrimp and collects related data. The protocol includes deployment of a 4-seam modified commercial shrimp bottom trawl (25 m length by 17 m width by 3 m high) at approximately 2–3 kts for 15 min. The surveys average 82 tows per year and require 22 DAS using the R/V *G. Michelle.*

11. *NEFSC Standard Bottom Trawl Surveys (BTS):* This survey has been conducted annually in spring (Mar–May, occasionally to June) and fall (Sep–Nov) from Cape Hatteras to the western Scotian Shelf. The survey operates on a 24-hour schedule. It tracks mature fish species and juvenile abundance over their range of distribution.

Protocols include deployment of a 4-seam, 3-bridle bottom trawl at 3 kts for 20 min. The combined surveys average 800 tows and require 120 DAS using the R/V *H.B. Bigelow,* or a similar size vessel. The net size is 31 m long, 19 m wide and 5 m high. Additional protocols include the use of CTD profiler, bongo net equipped with CTD, ADCP (output frequencies: 150 or 300 kHz), and the use of split beam and multibeam active acoustics (output frequencies: 18, 38, 70, 120, and 200 kHz).

12. *Atlantic Herring Survey:* This survey is conducted in September and October, as funding allows, on Georges Bank and in the Gulf of Maine. Survey operations occur on a 24-hr schedule. The survey collects fisheries independent herring spawning biomass data and also includes survey equipment calibration and performance tests.

Protocols included deployment of the Gourock high speed midwater rope trawl at 4 kt for 5 to 30 min. Approximately, 70 tows occur, which require about 34 DAS using the R/V *H.B. Bigelow* or similar size vessel. The net size is 15 m high and 30 m wide. Trawling protocols also include 20 deployments of the 4-seam, 3-bridle bottom trawl at 3 kts for 10–20 minutes using the R/V *H.B. Bigelow,* R/V *Pisces,* or similar size vessel. The net size is 31 m long, 19 m wide and 5 m high. Additional protocols include the continuous use of split beam and multibeam active acoustics (output frequencies: 18, 38, 70, 120, and 200 kHz).

13. *Atlantic Salmon Trawl Survey:* This survey is conducted annually in May, as funding allows, in inshore waters of Gulf of Maine and Penobscot Bay during daylight hours. It evaluates the marine ecology of Atlantic salmon.

Protocols include deployment of a modified mid-water trawl that fishes at the surface via pair trawling at 2–6 kt for 30 to 60 min. Approximately 130 tows occur which require approximately 21 DAS using contracted commercial vessels.

14. *Deepwater Biodiversity Survey:* This survey is conducted annually in summer, as funding allows, in deep-water from Cape Hatteras to the mid-Atlantic Ridge (international waters). Survey operations are on a 24-hour schedule. It is intended to collect fish, cephalopod and crustacean specimens from 1,000 to 2,000 m for tissue samples, specimen photos, and documentation of systematic characterization.

Protocols include deployment of the 4-seam, 3-bridle bottom trawl with

roller gear and the International Young Gadoid pelagic trawl. Tow speeds are typically 1.5–2.5 kts with duration of 180 minutes (in deep water each operation setting, fishing, and haulback requires 60 min). The surveys average approximately 18 tows per year and require about 16 DAS (R/V *H.B. Bigelow,* R/V *Pisces* or equivalent). Additional protocols include the use of multi-frequency active acoustics (output frequencies: 18, 38, 70, 120, and 200 kHz).

15. *Penobscot Estuarine Fish Community and Ecosystem Survey:* This survey is conducted annually year round during daylight hours in Penobscot Estuary and Bay using a contracted commercial vessel. It is intended to survey and collect fish and invertebrates samples for biometric and population analysis of estuarine and coastal species.

The protocol for the survey is to deploy a Mamou shrimp trawl modified to sample at the surface which is towed at 2 to 4 kt. The trawl has a mouth opening 12 x 6 m as is towed for 20 min. Approximately 200 trawl tows are conducted per year and require about 12 DAS.

16. *Northeast Integrated Pelagic Survey:* This survey is conducted annually each quarter (*e.g.,* Feb, May, Jun, Aug, and Nov) in an area that expends from Cape Hatteras to the western Scotian Shelf. It assesses the pelagic components of the ecosystem including: Water currents, water properties, phytoplankton, micro-zooplankton, meso-zooplankton, pelagic fish and invertebrates, sea turtles, marine mammals, and sea birds. Survey operations are on a 24-hour schedule.

NEFSC protocols include deploying a variety of fishing trawls:

- Hydroacoustic midwater rope trawl. The net is 15 m high, 30 m wide and towed at 4 kt for 5 to 30 min at depth; approximately 80 tows are conducted per year.
- Isaacs-Kidd midwater trawl. The net is 3 m and 4.5 m wide, and towed at 2.5 kt for a maximum of 30 min; approximately 160 tows are conducted per year.
- Mid-water trawl. The trawl is for use in shallow water (greater than 15 m depth). The net has an 8 m x 8 m opening and is towed at 2.5 kt for a maximum of 30 min; approximately 80 tows are conducted per year.

The surveys require about 80 DAS and are conducted on one of several vessels including: R/V *H.B. Bigelow,* R/V *Pisces,* and R/V *G. Gunter.* Additional protocols also include the use of CTD, rosette water sampler, bongo net equipped with CTD, the continuous use of split beam and multibeam active acoustics (output frequencies: 18, 38, 70, 120, 200 kHz) and ADCP (300 or 150 kHz).

17. *Apex Predators Bottom Longline Coastal Shark:* This survey is conducted bi-annually (Apr–May), contingent upon funding, in an area extending from Florida to Delaware. It assesses shark populations shark populations that are in sharp decline, including monitoring of distribution, abundance, and species composition, and tagging sharks. Survey operations are on a 24-hour schedule.

Protocols for the survey includes deploying a Florida style bottom longline. 'Florida' commercial-style bottom longline gear consists of 940 lb test monofilament mainline with 3.6 m gangions made of 730 lb test monofilament with a longline clip at one end and a 3/0 shark hook at the other. Hooks are baited with chunks of spiny dogfish and are attached to the mainline at roughly 20 m intervals. Five lb weights are attached at 15 hook intervals, and 15 lb weights and small buoys are attached at 50 hook intervals. To ensure that the gear fishes on the bottom, 20 lb weights are placed at the beginning and end of the mainline after a length of line 2–3 times the water depth is deployed. A 6 m flag buoy (high flyer) equipped with radar reflectors and flashing lights is attached to each end of the mainline. The gear is set at night without lightsticks, soak time is 3 hours, and the gear is hauled during daylight. There are about 56 sets per survey, which require 47 DAS using charter vessels.

18. *Apex Predators Pelagic Nursery Grounds Shark:* This research is conducted aboard commercial swordfish vessels in October on Georges Bank and the Grand Banks off Newfoundland. This collaborative work offers NEFSC researchers the opportunity to sample and tag bycaught sharks. Further, it offers a unique opportunity to sample and tag blue sharks and shortfin makos in a potential nursery area on the Grand Banks. Sharks are released after tagging.

Protocols for this research are based on commercial fishing operations. The commercial swordfish longline gear is set at night, with lightsticks, and hauled in the morning—vessel operations are on a 24-hour schedule. Commercial trips require 21 to 55 DAS using the F/V *Eagle Eye II.*

19. *Cooperative Atlantic States Shark Pupping and Nursery Survey (COASTSPAN):* This survey is conducted annually from Jun–Aug in coastal Delaware, New Jersey, and Rhode Island waters. It assesses shark nursery grounds and the species composition and habitat preferences of sharks that occur on these grounds. Survey operations are conducted during daylight hours.

Protocols include using small juvenile/large juvenile-adult shark longline gear, depending on the survey target. The gear characteristics for each target size are: Mainline length: 1000 ft/1000 ft; gangion length: 5 ft/8 ft; gangion spacing: 20 ft/40 ft; hook size and type: 12/0/16/0 mustad circle hooks; hooks per set: 50/75; bait: Mackerel or herring; soak time: 30 minutes/2 hours. The NEFSC-conducted surveys require 25 DAS, whereas the cooperating institutions surveys require about 40 DAS using the R/V *C.E. Stillwell* and partner vessels.

20. *NEFOP Observer Bottom Longline Training Trips:* As with the NEFOP Observer bottom and mid-water trawl training trips discussed earlier, these trips are certification training for NEFOP observers. However, the NEFSC has not implemented this training to date but expect it to occur when funding becomes available. The trips will occur from Maine to North Carolina annually for 5 DAS on contracted commercial fishing vessels using commercial bottom longline gear. The mainline length is approximately 3,000 ft with 600 hooks per set 2–3 sets per trip. Survey protocols do not include the use of lightsticks in training trip fishing operations.

21. *Annual Assessments of Sea Scallop Abundance and Distribution in Selected Closed/Rotational Areas:* The Atlantic Sea Scallop Research Set Aside rotational surveys occur at various times within the April–-September period, depending on the area studied (see Table 1–1 in the NEFSC's LOA application for specific sampling dates and ships used). The survey region includes: Large areas in Georges Bank, Closed Areas I & II, Hudson Canyon, DelMarVa, Nantucket, Gulf of Maine Mid-Atlantic areas, and other scallop fishing grounds. It monitors scallop biomass to derive estimates of Total Allowable Catch (TAC) for annual scallop catch specifications. Additionally, the surveys monitor recruitment, growth, and other biological parameters such as meat weight, shell height, and gonadal somatic indices.

Survey protocols include commercial and standardized NMFS scallop dredges, towed simultaneously. Survey operations are on a 24-hour schedule. The NMFS survey dredge is 8 ft wide, has 2-in rings, 4-in diamond twine top, and 1.5 in diamond mesh liner. The tow speed is approximately 3.8–4.0 kt for 15 min. The NEFSC completes about 100

dredge tows per year in each rotational area when sampled using that method. The average number of dredge tows per year is approximately 200 in all areas.

Additional protocols include the use of a towed photographic and sonar hydroacoustic imaging system (HABCAM) and a drop camera, and underwater video system. The HABCAM photographic system has 1 m field of view in each photograph, 5–10 frames per second with greater than 50 percent overlap at 5 kt towing speed. Photo system coupled with two Imagenix side scan sonars or Teledyne Benthos C3D side scan sonars. Between 350 and 690 nm of transects using digital photography by HABCAM each year. The drop camera typically samples over 400 stations on a 1.57 km sampling grid.

22. *NEFOP Observer Scallop Dredge Training Trips:* As described earlier, these trips are certification training for NEFOP observers and occur from Maine to North Carolina annually, with one-day trips (daylight tows) throughout the year as needed. The trips require approximately 6 DAS on contracted commercial fishing vessels using commercial scallop gear such as a turtle deflector dredge (4 to 5 m wide). The tow duration lasts approximately 1 hour with 2 to 3 tows per trip.

23. *Sea Scallop Survey:* The sea scallop survey occurs annually during May–July in an area that extends from Cape Hatteras, North Carolina to the Scotian Shelf, Canada. It assesses distribution and abundance of sea scallops and collects related data. Survey operations are on a 24-hour schedule.

The protocol, since 2008, is to use the chartered vessel R/V *H.R. Sharp* from the University of Delaware to conduct the standardized survey. The vessel deploys a NEFSC 8-ft scallop dredge equipped with a 2-in ring chain bag and lined with 1.5 in mesh webbing liner to retain small scallops. The dredge is towed at 3.8 kts for 15-minute tow intervals with a 3.5:1 tow wire to depth ratio (scope). Approximately 450 stations are sampled each year and require about 36 DAS. Additional protocols may include deploying a stereo-optic towed camera array to count and measure sea scallops and associated fauna utilizing automated digital imagery. The camera system was towed during the 2012 standard survey for half of the sea days. The non-invasive vehicle is towed by a 2-inch fiber optic cable that keeps the vehicle about 1.5 m off the sea floor.

24. *Surf Clam and Ocean Quahog Dredge Survey:* The NEFSC standard surf clam and quahog survey occurs every three years during Jun–Aug in an area that extends from southern Virginia to Georges Bank. It assesses distribution and abundance of surf clams and quahogs and collects related data. Survey operations are on a 24-hour schedule. Until 2012 the surveys were conducted using the F/RV *Delaware II.*

The protocol is to use commercial vessels to conduct the survey. The contract vessel will deploy a standard commercially sized hydraulic-jet clam dredge (13 ft blade width). The dredge will be towed at 1.5 kts for 5 min with a 2:1 tow wire to depth ratio (scope). The survey averages 150 tows per survey and requires 15 DAS.

25. *Beach Seine Survey, Maine:* The Maine beach seine survey occurs annually during Apr–Nov in the Penobscot River estuary. It monitors the salmon community within the estuary. Survey operations are during daylight hours.

The protocol is to set the seine biweekly. Seines are deployed with one end held on shore by a crew member and the other end attached to a boat traveling in an arc, and then retrieved by pulling both ends onto shore. The seine is 45 m in length with 5 mm nylon mesh. Typical seine heals are less than 15 min with the resultant catch sampled and released. The survey averages 5 sets per day and 100 sets per year and requires approximately 20 DAS.

26. *Beach Seine Survey, New Jersey:* The New Jersey beach seine survey occurs in summer (Jun–Aug) in Sandy Hook Bay and in the Navesink River, NJ. It monitors the fish community at fixed locations, and survey operations are conducted from shore during daylight hours.

The protocol is to set seines in close proximity to shore by small boat crews. Seines are deployed with one end held on shore by a crew member and the net slowly deployed by boat in an arc and then retrieved by pulling both ends onto shore. The seine is 45 m in length with 5 mm nylon mesh. Typical seine heals are less than 15 min with the resultant, catch sampled and released. The survey averages 90 sets per year.

27. *Coastal Maine Telemetry Network:* This research is conducted year round in the Gulf of Maine and April–November in the Penobscot River, estuary, and bay. The survey operates on a 24-hour schedule. This project monitors tagged fish (*e.g.,* Atlantic salmon, Atlantic sturgeon, and short-nose sturgeon) entering the Penobscot Bay System and exiting the system into the Gulf of Maine. A contracted commercial vessel is used to service the array and requires 10 DAS.

The protocol relies on fixed position acoustic telemetry array receivers on 30 to 120 moorings attached to 10 to 100 m vertical lines (600 lb test with weak links) spaced 250–400 m apart to scan the 69 kHz frequency. Data acquisition is obtained by hauling each buoy and downloading the data.

28. *Deep-sea Coral Survey:* The deep-sea coral survey occurs annually between April–August in deep water (greater than 500 meters) from Cape Hatteras to the eastern Scotain Shelf. It assesses the species diversity, community composition, distribution, and extent of deep sea coral and sponge habitats along the continental shelf margin, slope, and submarine canyons. Survey operations are on a 24-hour schedule. The survey averages 16 DAS, using the R/V *H.B. Bigelow.*

Protocols include deploying a 2-m beam trawl (optional) which is 2 m wide and towed at 2 kt for 20 min at depth with a maximum of 30 tows; towing a tethered ROV (10 dives) at 3 kt; a towed camera system at 0.25 kt for 8 hours (18 dives); and CTD profiler with Niskin 12-bottle rosette water sampler. Additional protocols include the use of ADCP (300 or 150 kHz) and split beam and multi-beam acoustics (output frequencies: 18, 38, 70, 120, and 200 kHz).

29. *DelMarVa Habitat Characterization:* This survey occurred one time in August, 2013 in coastal waters off Delaware, Maryland, and Virginia (DelMarVa). The purpose was to characterize and determine fish use of bottom habitats in coastal waters off the DelMarVa Peninsula, as an adjunct to the DelMarVa Reef Survey. Survey operations were during daylight hours aboard the R/V *Resolute* and required 5 DAS.

The protocol was to perform water column acoustic surveys using a single beam, dual frequency (38 and 120 kHz) sonar system. Acoustic transects were performed for periods of 4–6 hours at speeds of 2–4 kt, interrupted periodically to obtain vertical CTD casts recording profiles for temperature, conductivity, chlorophyll a, and turbidity.

30. *DelMarVa Reefs Survey:* This survey occurs annually during August in coastal waters off Delaware, Maryland, and Virginia. The objective is to determine the extent and distribution of rock outcrops and coral habitats and their use by black sea bass and other reef fishes. The survey is conducted using the R/V *Sharp* and requires 5 DAS. The protocol is to deploy and continuously tow a HabCam towed camera vehicle at 5 kt and a CTD.

31. *Diving Operations:* Daylight diving operations are conducted on a year-

round basis in Long Island Sound. It collects growth data on hard clams, oysters and bay scallops. The survey is conducted, using the R/V *Loosanoff,* R/V *Milford 17,* or R/V *Milford 22* and requires 20 DAS.

The protocol is to deploy wire mesh cages (1.5 in square mesh cages 60 in x 24 in x 18 in) that are staked to the substrate, and lantern nets (18 in diameter x 72 in long) that are anchored to the seabed with 4 four cinder blocks with the net oriented vertically.

32. *Ecology of Coastal Ocean Seascapes:* This survey is conducted annually in spring, summer, and fall within the New York Bight. It provides information required for a next generation spatially and temporally explicit population simulation model for commercially important stocks such as summer flounder. Approximately 80 tows are conducted using the R/V *Nauvoo* or R/V *Resolute,* and the survey requires 35 DAS.

The protocol is to deploy a video sled containing a Sea Cam 5000 12 v video cam towed at 1 kt for 300 m. Additional protocols include deployment of CTD, YSI, (1.4 m x 1 m Tucker trawl), plankton net, multi-nutrient analyzer (EcoLAB 2) and Kemmerer bottle. Active acoustics include an ADCP (600 kHz) and multi-frequency echosounder (output frequencies: 38 and 120 kHz).

33. *Finfish Nursery Habitat Study:* This survey is conducted from May through October in Long Island Sound during daylight hours within two hours of high tide. It collects fish eggs, larvae, and juvenile fish from the seabed to identify essential habitats, and to track movements of juvenile fish. The survey is conducted using the R/V *Loosanoff,* R/V *Milford 17,* or *Milford 22* and requires 10 DAS.

The protocol is to deploy: (1) An epibenthic sled (1 m x 333 cm opening) towed on the seabed at 1.5 kts for 5 min; (2) bongo net tow at 0.5 kts at varying depths between the surface and bottom; and (3) Neuston plankton net (1 m x 0.5 m opening a 1 kt at the surface). An additional protocol is to implant 30 acoustic (70 kHz) tags on juvenile fish. The tags have a 14-month battery life.

34. *Gear Effects on Amphipod Tubes:* This survey occurs annually in July and August in Sandy Hook, Barnegat, and Great South Bay, NJ. It assesses the abundance of amphipod tubes and the effects of bull raking and crab dredging. Sampling is conducted during day and night using the R/V Nauvoo, R/V Resolute, and R/V Harvey and requires 20 DAS. The protocol is to deploy a Ponar sediment grab, YSI, 1 m x 1 m Tucker trawl, and a plankton net. The number of samples varies.

35. *Gulf of Maine Ocean Observing System Mooring Cruise:* This survey occurs annually during May and Oct in the Gulf of Maine and northern portion of Georges Bank. It services oceanographic moorings operated by the University of Maine. The vessels used are the R/V *H.B. Bigelow,* R/V *Pisces,* and R/V *G. Gunther* which operate on a 24-hour schedule. The cruise requires 12 DAS. The protocol is to operate the ADCP (300 kHz) during vessel transects to moorings and service ADCP (300 and 75 kHz) on moorings.

36. *Hydroacoustic Surveys:* This survey occurs from spring to autumn (Apr–Nov) in Penobscot Bay and estuary. The purpose of the hydroacoustic component of the estuary surveys is to describe the spatial and temporal patterns of fish distribution in the estuary with a focus on diadromous species. The objective is to inform abundance and habitat-use data gaps through systematic sampling using a variety of gears. The surveys which require 25 DAS operate during daylight hours using the R/V *Silver Smolt* or similar size charter vessel. The protocol is to operate active multi-frequency acoustics: Split-beam (38 and 120 kHz) and DIDSON sonars (1.1 megahertz (MHz)).

37. *Maine Estuaries Diadromous Survey:* This survey occurs annually (Apr–Nov) in the Penobscot River estuary. It assesses the fish community. Survey operations are on a 24-hour schedule.

Protocols include setting a 2 m (2 m x 2 m; 1.9 cm mesh) or 1 m (1m x 1 m; 0.6 cm mesh) inshore by small boat crews during daylight at low tide. The fyke net soaks overnight and is hauled the next day. A marine mammal excluder device is incorporated into the 2 m net (but not the 1 m net). The marine mammal excluder device is a grate of metal bars with 14 centimeter spacing between the bars. The 1 m net has a throat opening of only 12.7 centimeters, which is too small for marine mammals to enter the net. From April–May the nets are set weekly, then twice per month through Nov. The survey averages 100 sets per year which requires about 100 days to complete.

38. *Miscellaneous Fish Collections and Experimental Survey Gear Trials:* These small-scale and opportunistic projects are conducted in all seasons in New York Bight estuary waters. The research activities are conducted on the R/V *Nauvoo,* R/V *Resolute,* R/V *Harvey,* or R/V *Chemist.*

The survey protocol depends on the sampling or gear trial protocols. Potential gear are: (1) Combination bottom trawl—net size: 23 ft head rope, 32 ft sweep, 7 ft rise, tow speed 2.5 kts for 20 min;

(2) Lobster pots—18 in x 24 in x 136 in wire pot connected by ⅜ in rope with 7 in x 14 in surface float. One to 60 posts are set for 24 to 96 hours between retrievals;

(3) Fish pots—9 in x 9 in x 18 in wire pots with ⅛ in mesh liner, connected by ⅜ in rope with 7 in x 14 in surface floats. One to 60 pots are set for 24–96 hours between retrievals;

(4) A 2-m beam trawl towed at 2 kts for 15 minutes, up to 5 tows per year;

(5) A seine net; and

(6) Trammel nets—multi trammel net, 12 in walling, 3 in mesh, 6 ft deep x 25 ft long.

39. *NEFOP Observer Gillnet Training Trips:* As described earlier, these one day trips are certification training for NEFOP observers and occur from Maine to North Carolina annually for 6 to 10 DAS on contracted commercial fishing vessels using the contracted vessel's gillnet gear. The nets are strings of 3 to 5 panels each soaked for 12 to 24 hours with 4 sets per trip, 40 sets total. There are no standard dimensions for commercial gillnets, but panels generally measure 3 m high and 91 m long.

40. *Nutrients and Frontal Boundaries:* This study is conducted quarterly in February, May–Jun, Aug, and Nov in the mid-Atlantic Bight (*i.e.,* coastal New Jersey and Long Island waters). The survey is conducted using the R/V *Resolute* and requires 10 DAS. Sampling occurs day and night. The survey protocol requires ADCP (600 kHz), multi-frequency active acoustic devices (38 and 120 kHz), and deployment of CTD.

41. *Ocean Acidification:* These studies are conducted quarterly in the Hudson River and adjacent coastal waters. The purpose is to develop baseline pH measurements in the Hudson River water. This is conducted using the R/V Resolute and requires 10 DAS. Sampling occurs day and night. The protocol is to deploy a YSI 6000, CTD, Kemmerer bottle, and EcoLAB2 multi-nutrient analyzer.

42. *Pilot Studies:* This project is conducted annually in June in Massachusetts coastal waters or on Georges Bank. The survey protocol is to deploy an autonomous underwater vehicle (AUV; Remus 100) during daylight hours to test equipment. The AUV is deployed from the R/V *G. Michelle* and requires 5 DAS.

43. *Rotary Screw Trap (RSTs) Survey:* Rotary screw trap sampling is conducted annually from Apr to Jun, daily (mornings) in the Penobscot River estuary. It assesses the fish community

within the estuary. This project requires 60 DAS.

The protocol is to deploy one to three traps depending on the sampling site. Trap dimensions are 1.2 m x 1.5 m x 2.4 m and tending schedules are adjusted according to conditions of the river/estuary and potential for interactions with protected species. Sampling can be modified (period fishing), delayed, or concluded according to the potential for interactions with Atlantic salmon or other protected species.

44. *Sea Bed Habitat Classification Survey:* This survey is conducted year round in Long Island Sound during daylight hours within two hours of high tide. It determines the composition of the surface layer of the seabed utilizing hydroacoustic equipment. The survey requires 20 DAS using the R/V *Loosanoff,* R/V *Milford 17,* or R/V *Milford 22.*

The protocol is to connect a Quester Tangent seabed classification system to the 50/200 kHz hull-mounted transducer while transects are made at 4.5 kts. In addition, a drop camera (24 in x 24 in x 24 in) in a water filled box is deployed 2 m or less above the seabed directly below the support vessel.

45. *Trawling to Support Finfish Aquaculture Research:* This work is conducted annually from May through Aug in Long Island Sound. It collects finfish broodstock for laboratory spawning and rearing and experimental studies.

The protocol is to deploy a combination bottom trawl with a net size (40 ft x 40 ft x 7 ft) at 2.5 kts for a maximum duration of 30 min; or shrimp trawl (16 ft x 16 ft x 2ft) at 1.5 kts for a maximum of 30 min. Additional protocols include rod and reel (I/O circle and J hooks, and gill net which is 150 ft long 8 ft high, with 4 in stretched mesh. The combination and shrimp trawls require 50 tows, the rod and reel 12 hooks fished for 1000 hr and 15 gillnet sets. The survey requires 30 DAS using the R/V *Loosanoff,* R/V *Milford 17,* or R/V *Milford 22.*

46. *U.S. Army Corps of Engineers Bottom Sampling:* Bottom grab samples are collected every two years in Woods Hole Harbor for habitat assessment monitoring. The protocol is to deploy a Peterson grab to collect 6 random samples. This is conducted by the R/V *G. Michelle* during daylight hours and requires one DAS.

47. *COASTSPAN Longline and Gillnet Surveys:* The purpose of this survey is to determine the location of shark nurseries, their species composition, relative abundance, distribution, and migration patterns. It is used to identify and refine essential fish habitat and provides standardized indices of abundance by species used in multiple species specific stock assessments. Cooperating institutions and agencies conduct this component of COASTSPAN (*e.g.,* South Carolina Department of Natural Resources, Georgia Department of Natural Resources, and University of North Florida). It occurs from Florida to Rhode Island annually during summer using 85 DAS on cooperating institution and agency vessels.

The protocol for the survey includes deployment of bottom longline gear or anchored sinking gillnet. There are two categories of longline gear characteristics based on the size of sharks targeted; small juvenile sharks and large juvenile/adult sharks. The mainline length is 1000 ft for both categories. Gangion length is 5 ft for small sharks and 8 ft for large sharks. Gangion spacing is 20 ft for small sharks and 40 ft for large sharks. Mustad circle hooks of size 12/0 are used for small sharks and size 16/0 for large sharks. Sets for small sharks use 50 hooks per set while large shark sets have 25 hooks. The bait is finfish (mackerel or herring) for both types of sets. Soak time is 30 minutes for small sharks and 2 hours for large sharks. Approximately 150 total sets are made per survey. The single panel anchored gillnet is 325 ft long x 10 ft high with 4 in stretch mesh made of #177 (20 lb test) nylon monofilament. The soak time is 3 hours, but the net is continuously checked to retrieve, tag and release target species and release all bycatch.

48. *Opportunistic Hydrographic Sampling:* This program consists of opportunistic plankton and hydrographic sampling during summer transits on the R/V *Okeanos Explorer* in waters less than 300 m deep. The protocol is to deploy small plankton nets (1 m x 2 m) to a depth of 25 m and to record hydrographic data from expendable bathythermographs.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the NEFSC's specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. We also describe the active acoustic devices used by the NEFSC.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal [μPa]), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu Pa^2 - s$) represents the total energy contained within a pulse, and considers both intensity and duration of exposure. For a single pulse, the numerical value of the SEL measurement is usually 5–15 dB lower than the rms sound pressure in dB re 1 μPa, with the comparative difference between measurements of rms and SEL measurements often tending to decrease with increasing range (Greene, 1997; McCauley *et al.,* 1998). Peak sound pressure is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (p-p), which is the algebraic difference between the peak positive and peak

negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams (as for the sources considered here) or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient sound levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, airguns, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have a greater potential to affect hearing sensitivity as compared to sounds that lack these features.

Non-pulsed (*i.e.,* continuous) sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

We use generic sound exposure thresholds (see Table 1 in this notice) to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions.

TABLE 1—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater)	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).

These are simple step-function thresholds that do not consider the repetition or sustained presence of a sound source nor does it account for the known differential hearing capabilities between species. Sound produced by the NEFSC's acoustic sources here are very short in duration (typically on the order of milliseconds), intermittent, have high rise times, and are operated from moving platforms. Thus, we consider them as impulsive sources.

NMFS is currently revising these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* NMFS has determined that the 160-dB threshold for impulsive sources is most appropriate for use in considering the potential effects of the NEFSC's activities.

Sound Propagation Assumptions

The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is not assumed for this proposed rulemaking. The use of a spherical spreading remains a reasonable, if not conservative, assumption for a generalized approach assessing the Level B harassment zones around various echo-sounders for this proposed rulemaking.

For the frequencies of the echo sounders/sonars used in the fisheries acoustics applications (greater than 10 kHz) and the realistic water depths involved in the surveys (greater than 30 m), the ratio of depth to the wave length is typically greater than 200, unlikely causing any type of cylindrical-like spreading, *i.e.* waveguide effect.

Due to the relatively short distances these sounds travel before falling below threshold due to spreading loss and absorption of these typically high-frequency sources, most are unlikely to reach distances far enough from the source to transition to propagation loss approaching cylindrical spreading. The multi-path arrivals that might lead to a lower propagation loss for more continuous signals, are more likely for these very short duration signals to lead to a lengthening of the signal (or even discrete pulses if surface/bottom bounces occur) rather than an increase in sound pressure level. This would leave the range at which the signal drops to a particular SPL (*e.g.,* 160 dB re 1uPa rms) unaltered from the spherical spreading model. Also critically important to consider is that these sources are highly directional, and most often pointed towards the bottom. When this acoustic energy hits the bottom at low angles of incidence or large grazing angle (*e.g.* on a path nearly perpendicular to the ocean floor), the much of this energy will be both absorbed and scattered, rather than reflected, leading to a very high loss of energy due to interaction with the bottom. As a result, the transmission loss would likely be much higher, rather than having a perfect reflection of all energy which could then lead to a less than 20LogR transmission loss overall.

Finally, there are also a number of very conservative assumptions used in the NEFSC's calculations (*e.g.,* highest source level and lowest frequency for range calculations) which leads to overestimates of the potential range where Level B harassment might occur, since operationally, parameters like the source level are likely to be lower in shallow water where a large range detection is unnecessary.

Description of NEFSC's Active Acoustic Devices

NEFSC's fisheries surveys may use a wide range of active acoustic devices for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. The NEFSC may also use passive listening sensors (*i.e.,* remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals. NEFSC active acoustic sources include various echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* acoustic Doppler current profilers).

Mid- and high-frequency underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite ''half power'' (−3 dB) points of the main lobe. For different transducers at a single operating frequency the beam width can vary from 180° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane. Please see Zykov and Carr (2014) for further discussion of electromechanical sound sources.

The types of active sources employed in fisheries acoustic research and monitoring may be considered in two broad categories here, based largely on their respective operating frequency (*e.g.,* within or outside the known audible range of marine species) and other output characteristics (*e.g.,* signal duration, directivity). As described below, these operating characteristics result in differing potential for acoustic impacts on marine mammals.

Category 1 active fisheries acoustic sources include those with high output frequencies (greater than 180 kHz) that are outside the known functional hearing capability of any marine mammal. Sounds that are above the functional hearing range of marine animals may be audible if sufficiently loud (*e.g.,* Mohl, 1968) or may elicit some type of behavioral response (*e.g.,* Deng *et al.,* 2014; Hastie *et al.,* 2014). However, the relative output levels of these sources mean that they would potentially be detectable to marine mammals at maximum distances of only a few meters, and are highly unlikely to be of sufficient intensity to result in behavioral harassment. These sources also generally have short duration signals and highly directional beam

patterns, meaning that any individual marine mammal would be unlikely to even receive a signal that would almost certainly be inaudible. Therefore, Category 1 sources are not expected to have any effect on marine mammals and are not considered further in this document.

Category 2 acoustic sources, which are present on most NEFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies than Category 1 sources. Category 2 active acoustic sources have moderate to high output frequencies (10 to 180 kHz) that are generally within the functional hearing range of marine mammals and therefore have the potential to cause behavioral harassment. However, while likely potentially audible to certain species, these sources have generally short ping durations and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood of an animal receiving or perceiving the signal. A number of these sources, particularly those with relatively lower output frequencies coupled with higher output levels can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impact on marine mammals.

We now describe specific acoustic sources used by the NEFSC. The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (*e.g.,* depth and bottom type). Lower frequencies of sound travel further in the water (*i.e.,* good range) but provide lower resolution (*i.e.,* are less precise). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (*i.e.,* good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. Power level is also adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Power is typically set to the lowest level possible in order to receive a clear return with the best data. Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. We summarize characteristics of these sources in Table 2.

1. *Multi-Frequency Narrow Beam Scientific Echosounders*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing ''visualization'' of the seafloor. Multi-frequency split-beam sensors are deployed from NEFSC survey vessels to acoustically map the distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish, and can also be used for species identification based on differences in frequency-dependent acoustic backscattering between species. The NEFSC operates Simrad EK60 system, which transmits and receives at six frequencies ranging from 18 to 333 kHz.

2. *Multibeam Echosounder and Sonar*—Multibeam echosounders and sonars operate similarly to the devices described above. However, the use of multiple acoustic ''beams'' allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior. The NEFSC operates the Simrad ME70 system, which is mounted to the hull of the research vessels and emits frequencies in the 70–120 kHz range.

3. *Single-Frequency Omnidirectional Sonar*—Low-frequency, high-resolution, long range fishery sonars operate with user selectable frequencies between 20–30 kHz, which provide longer range and prevent interference from other vessels. These sources provide omnidirectional imaging around the source with three different vertical beamwidths available (single or dual vertical view and 180° tiltable). At the 30-kHz operating frequency, the vertical beamwidth is less than 7° and can be electronically tilted from +10 to −80°, which results in differential transmitting beam patterns. The cylindrical multi-element transducer allows the omnidirectional sonar beam to be electronically tilted down to −60°, allowing automatic tracking of schools of fish within the entire water volume around the vessel. The NEFSC operates the Simrad SX90 system.

4. *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. Whereas current depth profile measurements in the past required the use of long strings of current meters, the ADCP enables measurements of current velocities across an entire water column. The ADCP measures water currents with sound, using the Doppler effect. A sound wave has a higher frequency when it moves towards the sensor (blue shift) than when it moves away (red shift). The ADCP works by transmitting ''pings'' of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water, and reflect back to the instrument. Due to the Doppler effect, sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return. Particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the particle and the water around it are moving. Sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor, and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings.

An ADCP anchored to the seafloor can measure current speed not just at the bottom, but at equal intervals to the surface. An ADCP instrument may be

anchored to the seafloor or can be mounted to a mooring or to the bottom of a boat. ADCPs that are moored need an anchor to keep them on the bottom, batteries, and a data logger. Vessel-mounted instruments need a vessel with power, a shipboard computer to receive the data, and a GPS navigation system so the ship's movements can be subtracted from the current velocity data. ADCPs operate at frequencies between 75 and 300 kHz.

5. *Net Monitoring Systems*—During trawling operations, a range of sensors may be used to assist with controlling and monitoring gear. Net sounders give information about the concentration of fish around the opening to the trawl, as well as the clearances around the opening and the bottom of the trawl; catch sensors give information about the rate at which the codend is filling; symmetry sensors give information about the optimal geometry of the trawls; and tension sensors give information about how much tension is in the warps and sweeps. The NEFSC uses the NetMind System which measures door spread and monitors the door height off of the bottom and operates at 30 and 200 kHz. The NEFSC also uses a Simrad ITI Catch Monitoring System, which allows monitoring of the exact position of the gear and of what is happening in and around the trawl.

TABLE 2—OPERATING CHARACTERISTICS OF NEFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies	Maximum source level (db)	Single ping duration (ms) and repetition rate (Hz)	Orientation/ directionality	Nominal beamwidth (degrees)
Simrad EK60 (surrogate for ES60) narrow beam echosounder.	18, *38, 70, 120, 200,* 333 kHz; primary frequencies italicized.	224 dB	Variable; most common settings are 1 ms and 0.5 Hz.	Downward looking	7° at 38 kHz. 11° at 18 kHz.
Simrad ME70 multibeam echosounder.	70–120 kHz	205 dB	0.06–5 ms; 1–4 Hz	Primarily downward looking.	130°.
Simrad SX90 narrow beam sonar.	20–30 kHz	219 dB	Variable	Omnidirectional	4–5° (variable for tilt angles from 0–45° from horizontal).
Teledyne RD Instruments ADCP, Ocean Surveyor.	75 kHz	224 dB	0.2 Hz	Downward looking	30°.
Simrad ITI Catch Monitoring System.	27–33 kHz	214 dB	0.05–0.5 Hz	Downward looking	40°.
Raymarine SS260 transducer for DSM300 (surrogate for FCV–292).	50, 200 kHz	217 dB	Unknown	Downward looking	19° at 50 kHz. 6° at 200 kHz.
Simrad EQ50	50, 200 kHz	210 dB	Variable	Downward looking	16° at 50 kHz. 7° at 200 kHz.
NetMind	30, 200 kHz	190 dB	Unknown	Downward looking	50°.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.'' Note that taxonomic information for certain species mentioned in this section is provided in the following section (''Description of Marine Mammals in the Area of the Specified Activity'').

The NEFSC proposed to implement the following suite of mitigation measures during fisheries research. The Center bases these procedures on protocols used during previous research surveys and/or best practices developed for commercial fisheries using similar gear. In addition, the proposed rule's adaptive management framework would require the NEFSC to review its procedures and investigate options for incorporating new mitigation measures and equipment into its on-going survey programs. The NEFSC will initiate a process for its Chief Scientists and vessel captains to communicate with each other about their experiences with protected species interactions during research work with the goal of improving decision-making regarding avoidance of adverse interactions. Evaluations of new mitigation measures include assessments of their effectiveness in reducing risk to marine mammals. However, consideration of additionally proposed measures must also pass safety considerations and allow survey results to remain consistent with previous data sets.

General Measures

Coordination and communication—When NEFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of NEFSC staff, but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When NEFSC survey effort is conducted aboard cooperative platforms (*i.e.,* non-NOAA vessels), ultimate responsibility, and decision authority again rests with non-NEFSC personnel (*i.e.,* vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.,* whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any NEFSC survey effort is composed, in part or whole, of NEFSC staff led by a Chief Scientist (CS). Therefore, because the NEFSC—not OMAO or any other entity that may have authority over survey platforms used by the NEFSC—is the applicant to whom any incidental take

authorization issued under the authority of these proposed regulations would be issued, we require that the NEFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. NEFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

Protected species training—In an effort to help standardize and further emphasize the importance of protected species information, the NEFSC will implement a formalized protected species training program for all crew members as part of its continuing research program that will be required for all NEFSC-affiliated research projects, including cooperative research partners. The NEFSC would conduct training programs on a regular basis which would include topics such as monitoring and sighting protocols, species identification, decision-making factors for avoiding take, procedures for handling and documenting protected species caught in research gear, and reporting requirements. Required training would occur through participation in protected species training programs developed by the regional commercial Fisheries Observer Program, which would typically be the Northeast Fisheries Observer Program (NEFOP).

All NEFSC research crew members that may be assigned to monitor for the presence of marine mammals and sea turtles during future surveys will be required to attend an initial training course and refresher courses annually or as necessary. The implementation of this new training program will formalize and standardize the information provided to all crew that might experience protected species interactions during research activities.

Vessel speed—Vessel speed during active sampling rarely exceeds 5 kt, with typical speeds being 2 to 4 kt. Transit speeds vary from 6 to 14 kt but average 10 kt. These low vessel speeds minimize the potential for ship strike (see ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' for an in-depth discussion of ship strike). At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other gears—The NEFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. In addition, specific aspects of gear design, survey protocols (*e.g.,* number of hooks), and limited frequency of use indicate that certain types of gears that may otherwise be expected to have the potential to result in take of marine mammals do not pose significant risk to certain species of marine mammals (*e.g.,* large whales interactions with NEFSC longline gears) and are not subject to specific mitigation measures due to the low level of survey effort and small survey footprint relative to that of commercial fisheries. However, at all times when the NEFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling procedures—The NEFSC will implement a number of handling protocols to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels. Because incidental take of marine mammals in fishing gear is similar for commercial fisheries and research surveys, NEFSC proposes to adopt these protocols, which are expected to increase post-release survival. In general, following a ''common sense'' approach to handling captured or entangled marine mammals will present the best chance of minimizing injury to the animal and of decreasing risks to scientists and vessel crew. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount. The NEFSC protected species training programs would include procedures for handling and documenting protected species caught in research gear, and reporting requirements. The CS and appropriate members of the research crews would also be trained using the same monitoring, data collection, and reporting protocols for protected species as is required by the NEFOP.

Written protocols—For all NEFSC-affiliated research projects and vessels, the vessel coordinator and center director reviews cruise instructions and protocols for avoiding adverse interactions with protected species. If the research is conducted on a NOAA vessel, the Commanding Officer finalizes these instructions. If any inconsistencies or deficiencies are found, the written instructions will be made fully consistent with the NEFOP training materials and any guidance on decision-making that arises out of the training opportunities described earlier. In addition, the NEFSC would review informational placards and reporting procedures and update them as necessary for consistency and accuracy. Many research cruises already include pre-sail review of protected species protocols. The NEFSC will require pre-sail briefings before all research cruises, including those conducted by cooperating partners, as part of its continuing research program.

Trawl Survey Visual Monitoring and Operational Protocols

The mitigation requirements described here are applicable to all beam, mid-water, and bottom trawl operations conducted by the NEFSC.

Visual monitoring—The OOD, CS (or other designated member of the Scientific Party), and crew standing watch on the bridge visually scan for marine mammals (and other protected species) during all daytime operations. Marine mammal watches will be conducted by scanning the surrounding waters with bridge binoculars to survey the area upon arrival at the station, during visual and sonar reconnaissance of the trawl line to look for potential hazards (*e.g.,* commercial fishing gear, unsuitable bottom for trawling, *etc.*), and while the gear is deployed. During nighttime operations, visual observation will be conducted using the naked eye and available vessel lighting.

The NEFSC considered a modification of the move-on rule to monitor for marine mammals for a 30-minute period while on station before deploying trawl gear. However, the NEFSC deemed this as not practicable because the measure would result in substantial delays to complete the surveys, increased costs and days at sea, and reductions in the number of stations and amount of fish sampled annually. The reduction in effort would adversely affect the scientific integrity of its research programs and quality of data used to inform NEFSC stock assessments by compromising the statistical continuity of long-term time-series data sets which could affect future fisheries management decisions.

Operational procedures—The primary purpose of conducting visual monitoring period is to implement the ''move-on rule.'' If marine mammals are sighted around the vessel before setting the gear, the OOD may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. During daytime trawl operations), research trawl gear is not deployed if marine mammals have been sighted near the ship unless those animals do not appear to be in danger of interactions with the trawl, as determined by the judgment of the OOD and CS. The efficacy of the move-on rule is limited during night time trawl operations or other periods of limited visibility. However, operational lighting from the vessel illuminates the water in the immediate vicinity of the vessel during gear setting and retrieval.

After moving on, if marine mammals are still visible from the vessel and appear to be at risk, the OOD may decide to move the vessel again or skip the sampling station. The OOD will consult with the CS or other designated scientist (identified prior to the voyage and noted on the cruise plan) and other experienced crew as necessary to determine the best strategy to avoid potential takes of these species. Strategies are based on the species encountered, their numbers and behavior, their position and vector relative to the vessel, and other factors. For instance, a whale transiting through the area and heading away from the vessel may not require any move, or may require only a short move from the initial sampling site, while a pod of dolphins gathered around the vessel may require a longer move from the initial sampling site or possibly cancellation of the station if the dolphins follow the vessel. If trawling operations have been delayed because of the presence of marine mammals, the vessel resumes trawl operations (when practical) only when the animals have not been sighted near the vessel or otherwise determined to no longer be at risk. This decision is at the discretion of the OOD and is situationally dependent.

In general, trawl operations will be conducted immediately upon arrival on station in order to minimize the time during which marine mammals may become attracted to the vessel. However, in some cases it will be necessary to conduct small net tows (*e.g.,* bongo net) prior to deploying trawl gear in order to avoid trawling through extremely high densities of gelatinous zooplankton that can damage trawl gear.

Once the trawl net is in the water, the OOD, CS, and/or crew standing watch will continue to visually monitor the surrounding waters and will maintain a lookout for marine mammal presence as far away as environmental conditions allow.

If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid marine mammal interaction will be determined by the professional judgment of the CS, watch leader, OOD and other experienced crew as necessary. This judgment will be based on past experience operating trawl gears around marine mammals (*i.e.,* best professional judgment) and on NEFSC training sessions that will facilitate dissemination of expertise operating in these situations (*e.g.,* factors that contribute to marine mammal gear interactions and those that aid in successfully avoiding such events). Best professional judgment takes into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (*e.g.,* net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to consider human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions and these details will be fed back into NEFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in ''Proposed Monitoring and Reporting'').

The efficacy of the ''move-on'' rule is limited during night time or other periods of limited visibility; research gear is deployed as necessary when visibility is poor, although operational lighting from the vessel illuminates the water in the immediate vicinity of the vessel during gear setting and retrieval.

Tow duration and direction—Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard tow durations of not more than thirty minutes at the target depth will be implemented, excluding deployment and retrieval time (which may require an additional thirty minutes, depending on target depth), to reduce the likelihood of attracting and incidentally taking marine mammals. Short tow durations decrease the opportunity for marine mammals to find the vessel and investigate. The exceptions to the 30-min tow duration are the Atlantic Herring Acoustic Pelagic Trawl Survey (AHAPTS) and the deep-water biodiversity survey where the total time in the water (deployment, fishing, haulback) are 40 to 60 min and 180 min, respectively.

Trawl tow distances will be less than 3 nm—typically 1–2 nm, depending on the specific survey and trawl speed—which is also expected to reduce the likelihood of attracting and incidentally taking marine mammals.

The NEFSC will tow the bottom trawl in either straight lines or following depth contours, whereas the AHAPTS tows would target fish aggregations and deep-water biodiversity tows along oceanographic or bathymetric features. Sharp course changes will be avoided in all surveys.

Gear maintenance—The crew will be careful when emptying the trawl to avoid damage to marine mammals that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not marine mammals are present. The vessel's crew will clean trawl nets prior to deployment to remove prey items that might attract marine mammals. Catch volumes are typically small with every attempt made to collect all organisms caught in the trawl.

Speed and course alterations—The vessel's speed during active sampling with trawl nets will not exceed 5 kt. Typical towing speeds are 2–4 kt. Transit speed between active sampling stations will range from 10–12 kt, except in areas where vessel speeds are regulated to lower speeds. When

operating in North Atlantic right whale Seasonal Management Areas, Dynamic Management Areas, or in the vicinity of right whales or surface active groups of large baleen whales the vessel's speed will not exceed 10 kt. Further, vessels will reduce speed and change course in the vicinity of resting groups of large whales.

As noted earlier, if marine mammals are sighted prior to deployment of the trawl net, the vessel may be moved away from the animals to a new station at the discretion of the OOC. Also, at any time during a survey or in transit, any crew member that sights marine mammals that may intersect with the vessel course will immediately communicate their presence to the bridge for appropriate course alteration or speed reduction as possible to avoid incidental collisions.

Dredge Survey Visual Monitoring and Operational Protocols

The mitigation requirements described here are applicable to all hydraulic, New Bedford-type, commercial, and Naturalist dredge operations conducted by the NEFSC.

Visual monitoring—Visual monitoring requirements for all dredge gears are the same as those described above for trawl surveys. Please see that section for full details of the visual monitoring and ''move-on'' protocols. The small size of the scallop dredge (eight feet wide) and clam dredge (13 feet wide) and the fishing orientation of the opening during most of the dredge haul (downward against the seabed) minimize the need for marine mammal excluding devices. However, care will be taken when emptying the dredge to avoid damage to protected species that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not protected species are present.

Tow duration and direction—Standard dredge durations are 15 min or less, excluding deployment and retrieval time, to reduce the likelihood of attracting and incidentally taking protected species.

Longline Gear Visual Monitoring and Operational Protocols

Visual monitoring—Visual monitoring requirements for pelagic or demersal longline surveys are the same as those described above for trawl surveys. Please see that section for full details.

Operational procedures—The precautions for setting longline gear apply to the following NEFSC surveys: Apex Predators Bottom Longline Coastal Shark, Apex Predators Pelagic Nursery Grounds Shark, COASTSPAN Longline Surveys, and the NEFOP Observer Bottom Longline Training Trips. Prior to setting the gear, the OOD, CS, and crew visually scan the waters surrounding the vessel for protected species at least 30 minutes before deploying the longline gear. This typically occurs during transit through the setting area and then returning back to the starting point. Longline sets may be delayed if marine mammals have been detected near the vessel in the 30 minutes prior to setting the gear.

For the Apex Predators Bottom Longline Coastal Shark Survey, the OOD, CS, and crew uses a one nautical mile radius around the vessel as to guide the decision on whether marine mammals are at risk of interactions before deploying the gear). The vessel may be moved to a new location if marine mammals are present and the OOD uses professional judgment to minimize the risk to marine mammals from potential gear interactions.

During longline sets, the OOD, CS, and crew standing watch will monitor the gear to look for hooked or entangled marine mammals and other protected species.

NEFSC longline sets are conducted with either drifting pelagic gear marked at both ends with high flyers or radio buoys and at specific intervals throughout the line with buoys or bottom set gear also marked at both ends with high flyers and buoys at specific intervals throughout the line. The NEFSC has established standard soak times of three hours for bottom longline and two to five hours for pelagic longline surveys. The CS will ensure that soak times do not exceed five hours, except in cases where weather or mechanical difficulty delay gear retrieval.

NEFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear). Bait is removed from hooks during retrieval and retained on the vessel until all gear is removed from the area. The crew will not discard offal or spent bait while longline gear is in the water to reduce the risk of marine mammals detecting the vessel or being attracted to the area.

If marine mammals are detected while longline gear is in the water, the OOD exercises similar judgments and discretion to avoid incidental take of marine mammals as described for trawl gear. The species, number, and behavior of the marine mammals are considered along with the status of the ship and gear, weather and sea conditions, and crew safety factors.

If marine mammals are present during setting operations, immediate retrieval or halting the setting operations may be warranted. If setting operations have been halted due to the presence of marine mammals, resumption of setting will not begin until no marine mammals have been observed for at least 15 min. When visibility allows, the OOD, CS, and crew standing watch will conduct set checks every 15 min to look for hooked, or entangled marine mammals.

If marine mammals are present during retrieval operations, haul-back will be postponed until the OOD determines that it is safe to proceed. The NEFSC would take extra caution during gear retrieval.

Gill Net Visual Monitoring and Operational Protocols

Visual monitoring—The monitoring procedures for gill nets are similar to those described for trawl gear. The NEFSC does not propose to use pelagic gillnets in any survey.

Operational procedures—Gill nets are not deployed if marine mammals have been sighted on arrival at the sample site. The exception is for animals that, because of their behavior, travel vector or other factors, do not appear to be at risk of interaction with the gillnet gear. If no marine mammals are present, the gear is set and monitored during the soak. If a marine mammal is sighted during the soak and appears to be at risk of interaction with the gear, then the gear is pulled immediately.

For the COASTSPAN surveys, the NEFSC will actively monitor for potential bottlenose dolphin entanglements by hand-checking the gillnet every 20 minutes by lifting the foot net. Also, in the unexpected case of a bottlenose dolphin entanglement, the NEFSC would request and arrange for expedited genetic sampling in order to determine the stock and would photograph the dorsal fin and submit to the Southeast Stranding Coordinator for identification/matching to bottlenose dolphins in the Mid-Atlantic Bottlenose Dolphin Photo-identification Catalog.

On the NEFOP Observer Training cruises, acoustic pingers and weak links are used on all gill nets consistent with the Harbor Porpoise Take Reduction Plan regulations at (50 CFR 229.33) for commercial fisheries to reduce marine mammal bycatch. Under the Harbor Porpoise Take Reduction Plan, gillnet gear used in specific areas during specific times are required to be equipped with pingers. We discuss the use of pingers and their acoustic characteristics later within the subsection titled ''Cooperative Research

Visual Monitoring and Operational Protocols, Acoustic Deterrent Devices.''

All NEFOP protocols concerning monitoring and reporting protected species interactions are followed as per the current NEFOP Observer Manual (available on the Internet at *http://www.nefsc.noaa.gov/fsb/manuals/2013/NEFSC_Observer_Program_Manual.pdf*). The soak duration time is 12 to 24 hours. Communication with the NEFOP Training Lead and the vessel captain occurs within 24 to 48 hours prior to setting of gear. During these communications, the NEFOP Training Lead and Captain decide when to set the gear, specifically taking into account any possible weather delays to avoid a long soak period. They do not deploy the gear if a significant weather delay is expected that would increase the preferred soak duration to greater than 24 hours. In those situations, the gear set times will be delayed.

Fyke Net Visual Monitoring and Operational Protocols

Visual monitoring—Fyke nets are normally set inshore by small boat crews, who will visually survey areas prior to deploying the nets. Monitoring is done prior to setting and during net retrieval which is is conducted every 12 to 24-. If marine mammals are in close proximity (approximately 100 m) of the setting location, the field team will make a determination if the set location needs to be moved. If marine mammals are observed to interact with the gear during the setting, the crew will lift and remove the gear from the water.

Operational procedures—A 2-m fyke net will be deployed with a marine mammal excluder device that reduces the effective mouth opening to less than 15 cm. The 1-m fyke net does not require an excluder device as the opening is 12 cm. These small openings will prevent marine mammals from entering the nets.

Beach Seine Visual Monitoring and Operational Protocols

Visual monitoring—Prior to setting the seine nets, researchers would visually survey the area for marine mammals. They would also observe for marine mammals continuously during sampling.

Operational procedures—Seines are deployed with one end held on shore by a crew member and the net slowly deployed by boat in an arc and then retrieved by pulling both ends onto shore. Typical seine hauls are less than 15 min with the resulting catch sampled and released. Scientists would look as far as field of view permits from the beach in the general sampling area before the net is fished and would not deploy if marine mammals are present. If marine mammals are observed to be interacting with the gear, it will be lifted and removed from the water.

Rotary Screw Trap Visual Monitoring and Operational Protocols

Visual monitoring—Sites are visually surveyed for marine mammals prior to submerging the gear in the water channel. The traps remain in the water for an extended period of time and sampling crews tend the traps on a daily basis. The researchers would modify, delay, or conclude the sampling period depending on the numbers of marine mammals nearby and their potential for interacting with the gear as determined by the professional judgment of the researchers.

Operational procedures—Under most conditions the live car (*i.e.,* catch holding pen) is about 75 percent full of water, which would allow any trapped mammals to breath until release from the trap. RST tending schedules are adjusted according to conditions of the river/estuary and threats to protected species (*i.e.,* presence of ESA-listed fish or marine mammals in the area). If capture occurs, animal is temporarily retained in live tank and released as soon as possible.

Cooperative Research Visual Monitoring and Operational Protocols

The mitigation requirements described earlier are applicable to commercial fishing vessels engaged in NEFSC cooperative research using trawls, dredges, longline, and gillnet gears.

These commercial fishing vessels are significantly smaller than the NOAA vessels and depending on their size and configuration, marine mammal sighting may be difficult to make during all aspects of fishing operations. Further, scientific personnel are normally restricted from the deck during gear setting and haulback operations. For all vessel size classes, it is unlikely that the individual(s) searching for marine mammals will have unrestricted 360 degree visibility around the vessel. However, observations during approach to a fishing station and during gear setting and haulback may be feasible and practicable from the wheelhouse.

These projects will also comply with the TRP mitigation measures and gear requirements specified for their respective fisheries and areas (*e.g.,* pingers, sinking groundlines, and weak links on gillnet gear).

The NEFSC will review all NEFSC-affiliated research instructions and protocols for avoiding adverse interactions with protected species. If those instructions/protocols are not fully consistent with NEFOP training materials and guidance on decision-making that arises from NEFSC protected species training, the NEFSC will incorporate specific language into its contracts and agreements with NEFSC-affiliated research partners requiring adherence to all required training requirements, operating procedures, and reporting requirements for protected species.

Visual monitoring—Commercial fishing vessels are significantly smaller than the NOAA white boats, and depending on their size and configuration, marine mammal sighting may be difficult to make during all aspects of fishing operations. Also, scientific personnel are normally restricted from the deck during gear setting and haulback operations. However, observations during approach to a fishing station, and during gear setting and haulback may be feasible from the wheelhouse.

Operational procedures—For the Apex Predators Bottom Longline Coastal Shark and COASTSPAN longline and gillnet surveys, NEFSC partners would implement the Move-on-Rule. During the soak, the line is run and if any marine mammals are sighted the line is pulled immediately. On COASTSPAN gillnet surveys, gillnets are continuously monitored during the 3-hour soak time by under-running it, pulling it across the boat while leaving the net ends anchored. All animals, algae and other objects are removed with each pass as the net is reset into the water to minimize bycatch mortality.

Acoustic deterrent devices—NEFSC-affiliated cooperative research projects involving commercial vessels and gear, as well as the NEFOP Observer Training Gillnet Surveys currently deploy acoustic pingers on anchored sinking gillnets in areas where they are required by commercial fisheries to comply with requirements in the Harbor Porpoise Take Reduction Plan (50 CFR 229.33). A pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (±2 kHz) sound at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (±15 milliseconds), and repeating every 4 seconds (±.2 seconds).

Acoustic deterrent devices (pingers) are underwater sound-emitting devices that have been shown to decrease the probability of interactions with certain species of marine mammals when fishing gear is fitted with the devices. Multiple studies have reported large decreases in harbor porpoise mortality (approximately eighty to ninety percent)

in bottom-set gillnets (nets composed of vertical panes of netting, typically set in a straight line and either anchored to the bottom or drifting) during controlled experiments (*e.g.,* Kraus *et al.,* 1997; Trippel *et al.,* 1999; Gearin *et al.,* 2000). Using commercial fisheries data rather than a controlled experiment, Palka *et al.* (2008) reported that harbor porpoise bycatch rates in the northeast U.S gillnet fishery when fishing without pingers was about two to three times higher compared to when pingers were used. After conducting a controlled experiment in a California drift gillnet fishery during 1996–97, Barlow and Cameron (2003) reported significantly lower bycatch rates when pingers were used for all cetacean species combined, all pinniped species combined, and specifically for short-beaked common dolphins (85 percent reduction) and California sea lions (69 percent reduction). While not a statistically significant result, catches of Pacific white-sided dolphins were reduced by seventy percent. Carretta *et al.* (2008) subsequently examined nine years of observer data from the same drift gillnet fishery and found that pinger use had eliminated beaked whale bycatch. Carretta and Barlow (2011) assessed the long-term effectiveness of pingers in reducing marine mammal bycatch in the California drift gillnet fishery by evaluating fishery data from 1990–2009 (with pingers in use beginning in 1996), finding that bycatch rates of cetaceans were reduced nearly fifty percent in sets using a sufficient number of pingers. However, in contrast to the findings of Barlow and Cameron (2003), they report no significant difference in pinniped bycatch.

To be effective, a pinger must emit a signal that is sufficiently aversive to deter the species of concern, which requires that the signal is perceived while also deterring investigation. In rare cases, aversion may be learned as a warning when an animal has survived interaction with gear fitted with pingers (Dawson, 1994). The mechanisms by which pingers work in operational settings are not fully understood, but field trials and captive studies have shown that sounds produced by pingers are aversive to harbor porpoises (*e.g.,* Laake *et al.,* 1998; Kastelein *et al.,* 2000; Culik *et al.,* 2001), and it is assumed that when marine mammals are deterred from interacting with gear fitted with pingers that it is because the sounds produced by the devices are aversive. Two primary concerns expressed with regard to pinger effectiveness in reducing marine mammal bycatch relate to habituation (*i.e.,* marine mammals may become habituated to the sounds made by the pingers, resulting in increasing bycatch rates over time; Dawson, 1994; Cox *et al.,* 2001; Carlstrom *et al.,* 2009) and the ''dinner bell effect'' (Dawson, 1994; Richardson *et al.,* 1995), which implies that certain predatory marine mammal species (*e.g.,* sea lions) may come to associate pingers with a food source (*e.g.,* fish caught in nets) with the result that bycatch rates may be higher in nets with pingers than in those without.

Palka *et al.* (2008) report that habituation has not occurred on a level that affects the bycatch estimate for the northeast U.S. gillnet fishery, while cautioning that the data studied do not provide a direct method to study habituation. Similarly, Carretta and Barlow (2011) report that habituation is not apparent in the California drift gillnet fishery, with the proportion of pinger-fitted sets with bycatch not significantly different for either cetaceans or pinnipeds between the periods 1996–2001 and 2001–09; in fact, bycatch rates for both taxa overall were lower in the latter period. We are not aware of any long-term behavioral studies investigating habituation. Bycatch rates of California sea lions, specifically, did increase during the latter period. However, the authors do not attribute the increase to pinger use (*i.e.,* the ''dinner bell effect''); rather, they believe that continuing increases in population abundance for the species (Carretta *et al.,* 2014) coincident with a decline in fishery effort are responsible for the increased rate of capture. Despite these potential limitations on the effectiveness of pingers, and while effectiveness has not been tested on trawl gear, we believe that the available evidence supports an assumption that use of pingers is likely to reduce the potential for marine mammal interactions with NEFSC gear.

If one assumes that use of a pinger is effective in deterring marine mammals from interacting with fishing gear, one must therefore assume that receipt of the acoustic signal has a disturbance effect on those marine mammals (*i.e.,* Level B harassment). However, Level B harassment that may be incurred as a result of NEFSC's use of pingers does not constitute take that must be authorized under the MMPA. The MMPA prohibits the taking of marine mammals by U.S. citizens or within the U.S. EEZ unless such taking is appropriately permitted or authorized. However, the MMPA provides several narrowly defined exemptions from this requirement (*e.g.,* for Alaskan natives; for defense of self or others; for Good Samaritans [16 U.S.C. 1371(b)–(d)]). Section 109(h) of the MMPA (16 U.S.C. 1379(h)) allows for the taking of marine mammals in a humane manner by federal, state, or local government officials or employees in the course of their official duties if the taking is necessary for ''the protection or welfare of the mammal,'' ''the protection of the public health and welfare,'' or ''the non-lethal removal of nuisance animals.'' Section 101(a)(4)(A) of the MMPA (16 U.S.C. 1371) allows for the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch if the deterrence does not result in mortality or serious injury.

The NEFSC's use of pingers as a deterrent device, which may cause Level B harassment of marine mammals, is intended solely for the avoidance of potential marine mammal interactions with NEFSC and cooperative research gear (*i.e.,* avoidance of Level A harassment, serious injury, or mortality). Therefore, use of such deterrent devices, and the taking that may result, is for the protection and welfare of the mammal and is covered explicitly under MMPA section 109(h)(1)(A) or section 101(a)(4)(A). Potential taking of marine mammals resulting from NEFSC's use of pingers is not discussed further in this document.

Acoustic Telemetry Gear Visual Monitoring and Operational Protocols

The NEFSC deploys passive acoustic telemetry receivers in many of Maine's rivers, estuaries, bays and into the Gulf of Maine. These receivers are used to monitor tagged Atlantic salmon, as well as other tagged animals of collaborators along the east coast.

Visual monitoring—The receivers are set by small boat crews that visually survey the area for marine mammals prior to setting. Interactions with the gear or boats are not expected.

Operational Procedures—Receivers are anchored using a 24 pound mushroom anchor or a 79 pound cement mooring and attached to a surface float by 11/16 inch sinking pot warp with a weight rating of 1,200 pounds. Units in the estuary and bay are equipped with whale-safe weak links with a weight rating of 600 pounds. Other receivers are deployed on coastal commercial lobstermen's fishing gears which comply with fishing regulations for nearshore operations. The receivers are recovered twice annually, but the traps are tended according to required fishing schedules of the fishery.

We have carefully evaluated the NEFSC's proposed mitigation measures and considered a range of other measures in the context of ensuring that

we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the NEFSC's proposed measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed NEFSC' species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the NEFSC's application, as well as to NMFS' Stock Assessment Reports (SARs; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting the information here. Table 3 lists all species with expected potential for occurrence in the Atlantic coast region where the NEFSC proposes to conduct the specified activity and summarize information related to the population or stock, including potential biological removal (PBR). For taxonomy, we follow Committee on Taxonomy (2014).

PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is discussed in greater detail later in this document (see ''Negligible Impact Analyses'').

Species that could potentially occur in the proposed research areas but are not expected to have the potential for interaction with NEFSC research gear or that are not likely to be harassed by NEFSC's use of active acoustic devices are described briefly in the NEFSC's application and in this document but omitted from further analysis. These include extralimital species (*e.g.,* beluga (*Delphinapterus leucas*), Bryde's (*Balaenoptera edeni*), and false killer (*Pseudorca crassidens*) whales, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species.

For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA. Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NEFSC RESEARCH ACTIVITIES IN THE ATLANTIC COAST REGION

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae (right whales)						
North Atlantic right whale.	*Eubalaena glacialis* ..	Western Atlantic	E/D; Y	465 (n/a, 465, 2010)	0.9	4.75
Family Balaenopteridae (rorquals)						
Minke whale	*Balaenoptera acutorostrata acutorostrata.*	Canadian East Coast	–; N	20,741 (0.30, 16,199, 2007).	162	[6] 9.45

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NEFSC RESEARCH ACTIVITIES IN THE ATLANTIC COAST REGION—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]
Sei whale	*B. borealis borealis*	Nova Scotia	E/D; Y	357 (0.52, 236, 2011)	0.5	0.8
Blue whale	*B. musculus musculus.*	Western North Atlantic.	E/D; Y	Unk (n/a, 440, 2009) [4].	0.9	Unk
Fin whale	*B. physalus physalus*	Western North Atlantic.	E/D; Y	1,618 (0.33, 1,234, 2011).	2.5	3.35
Humpback whale	*Megaptera novaeangliae novaeangliae.*	Gulf of Maine	E/D; Y	823 (0, 823, 2008)	2.7	[7] 10.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Sperm whale	*Physeter macrocephalus.*	Western North Atlantic.	E/D; Y	2,288 (0.28, 1,815, 2011).	3.6	0.8
Family Kogiidae						
Pygmy sperm whale	*Kogia breviceps*	Western North Atlantic.	–; N	3,785 (0.47, 2,598, 2011).	26	3.4
Dwarf sperm whale	*K. sima*	Western North Atlantic.	–; N	3,785 (0.47, 2,598, 2011).	26	3.4
Family Ziphiidae (beaked whales)						
Northern bottlenose whale.	*Hyperoodon ampullatus.*	Western North Atlantic.	–; N	Unk	Unk	0
Blainville's beaked whale.	*Mesplodon densirostris.*	Western North Atlantic.	–; N	7,092 (0.54, 4,632, 2011) [5].	46	0.2
Sowerby's beaked whale.	*M. bidens*	Western North Atlantic.	–; N	7,092 (0.54, 4,632, 2011) [5].	46	0
Gervais' beaked whale.	*M. europaeus*					
True's beaked whale	*M. mirus*					
Cuvier's beaked whale.	*Ziphius cavirostris*	Western North Atlantic.	–; N	6,532 (0.32, 5,021, 2011).	50	0.4
Family Delphinidae						
Short-beaked common dolphin.	*Delphinus delphis delphis.*	Western North Atlantic.	–; N	173,486 (0.55, 112,531, 2007).	1,125	[6] 289
Pygmy killer whale	*Feresa attenuata*	Western North Atlantic.	–; N	Unk	Unk	Unk
Short-finned pilot whale.	*Globicephala macrorhynchus.*	Western North Atlantic.	–; N	21,515 (0.37, 15,913, 2011).	159	140
Long-finned pilot whale.	*G. melas*	Western North Atlantic.	–; N	26,535 (0.35, 19,930, 2006).	199	35
Risso's dolphin	*Grampus griseus*	Western North Atlantic.	–; N	18,250 (0.46, 12,619, 2011).	126	51
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic.	–; N	Unk	0	0
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	Western North Atlantic.	–; N	48,819 (0.61, 30,403, 2011).	304	116
White-beaked dolphin	*L. albirostris*	Western North Atlantic.	–; N	3,003 (0.94, 1,023, 2006).	10	0
Killer whale	*Orcinus orca*	Western North Atlantic.	–; N	Unk	Unk	Unk
Melon-headed whale	*Peponocephala electra.*	Western North Atlantic.	–; N	Unk	Unk	0
Pantropical spotted dolphin.	*Stenella attenuata*	Western North Atlantic.	–; N	3,333 (0.91, 1,733, 2011).	17	0
Clymene dolphin	*S. clymene*	Western North Atlantic.	–; N	Unk	Unk	Unk
Striped dolphin	*S. coeruleoalba*	Western North Atlantic.	–; N	54,807 (0.3, 42,804, 2011).	428	0
Atlantic spotted dolphin.	*S. frontalis*	Western North Atlantic.	–; N	44,715 (0.43, 31,610, 2011).	316	0

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NEFSC RESEARCH ACTIVITIES IN THE ATLANTIC COAST REGION—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]
Spinner dolphin	*S. longirostris*	Western North Atlantic.	–; N	Unk	Unk	Unk
Rough-toothed dolphin.	*Steno bredanensis*	Western North Atlantic.	–; N	271 (1.0, 134, 2011)	1.3	0
Common bottlenose dolphin.	*Tursiops truncatus truncatus.*	Western North Atlantic (WNA) Offshore.	–; N	77,532 (0.40, 56,053, 2011).	561	45.1
		WNA Northern Migratory Coastal.	–/D; Y	11,548 (0.36, 8,620, 2011).	86	[8] 3.8–5.8
		WNA Southern Migratory Coastal.	–/D; Y	9,173 (0.46, 6,326, 2011).	63	[8] 2.6–16.5
		WNA S. Carolina/ Georgia Coastal.	–/D; Y	4,377 (0.43, 3,097, 2011).	31	Unk
		WNA Northern Florida Coastal.	–/D; Y	1,219 (0.67, 730, 2011).	7	Unk
		WNA Central Florida Coastal.	–/D; Y	4,895 (0.71, 2,851, 2011).	29	Unk
		Northern North Carolina Estuarine System.	–; Y	950 (0.23, 785, 2006)	7.9	[8] 1.9–9.1
		Southern North Carolina Estuarine System.	–; Y	188 (0.19, 160, 2006)	1.6	[8] 0.2–0.8
		Northern South Carolina Estuarine System.	–; Y	Unk	Unk	[6] Unk
		Charleston Estuarine System.	–; Y	289 (0.03, 281, 2006)	2.8	Unk
		Northern Georgia/ Southern South Carolina Estuarine System.	–; Y	Unk	Unk	Unk
		Southern Georgia Estuarine System.	–; Y	194 (0.05, 185, 2009)	1.9	Unk
		Jacksonville Estuarine System.	–; Y	Unk	Unk	Unk
		Indian River Lagoon Estuarine System.	–; Y	Unk	Unk	Unk
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena phocoena.*	Gulf of Maine/Bay of Fundy Stock.	–; N	79,883 (0.32, 61,415, 2011).	706	[6] 683
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals)						
Hooded seal	*Cystophora cristata*	Western North Atlantic.	–; N	Unk	Unk	[9] 5,199
Gray seal	*Halichoerus grypus grypus.*	Western North Atlantic.	–; N	331,000 (n/a, n/a, 2012).	Unk	[6 10] 4,959
Harp seal	*Pagophilus groenlandicus.*	Western North Atlantic.	–; N	Unk	Unk	306,082
Harbor seal	*Phoca vitulina vitulina*	Western North Atlantic.	–; N	75,834 (0.15, 66,884, 2012).	2,006	[6] 441

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. NMFS automatically designates any species or stock listed under the ESA as depleted and as a strategic stock under the MMPA.

[2] NMFS marine mammal stock assessment reports at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, abundance and PBR is unknown (Unk) and the CV is not applicable.

[3] These values, found in NMFS' SARs, represent PBR and annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, and ship strike). In some cases PBR is unknown (Unk) because the minimum population size cannot be determined. Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or as unknown (Unk).

[4] Given the small proportion of the distribution range that has been sampled and considering the low number of blue whales encountered and photographed, the current data, based on photo-identification, do not allow for an estimate of abundance of this species in the Northwest Atlantic with a minimum degree of certainty (Sears *et al.* 1987; Hammond et al. 1990; Sears *et al.* 1990; Sears and Calambokidis 2002; Fisheries and Oceans Canada 2009).

[5] The total number of this species of beaked whale off the eastern U.S. and Canadian Atlantic coast is unknown, and seasonal abundance estimates are not available for this stock. However, several estimates of the undifferentiated complex of beaked whales (*Ziphius* and *Mesoplodon spp.*) from selected regions are available for select time periods (Barlow *et al.* 2006) as well as two estimates of *Mesoplodon spp.* beaked whales alone (Waring *et al.,* 2015).

[6] The NEFSC has historically taken this species in a NEFSC research survey (2004–2015) (see Tables 4, 5, and 6).

[7] This average includes humpback mortalities and serious injuries that occurred in the southeastern and mid-Atlantic states that could not be confirmed as involving members of the Gulf of Maine stock. This average includes Canadian records from the southern side of Nova Scotia within the mortality and serious injury rates, to reflect the effective range of this stock.

[8] The range for the total estimated average annual fishery mortality (minimum-maximum) reflects the uncertainty in assigning observed or reported mortalities to a particular stock.

[9] The average consists of three components: 1) 5,173 from 2001–2005 (2001 = 3,960; 2002 = 7,341; 2003 = 5,446, 2004 = 5,270; and 2005 = 3,846) average catches of Northwest Atlantic population of hooded seals by Canada and Greenland; 2) 25 hooded seals (CV = 0.82) from the observed U.S. fisheries; and 3) one hooded seal from average 2001–2005 stranding mortalities resulting from non-fishery human interactions (Waring *et al.,* 2015).

[10] The average consists of five components: 1) 1,100 (CV = 0.11) (Table 3) from the 2007–2011 U.S. observed fishery; 2) 9 from average 2007–2011 non-fishery related, human interaction stranding mortalities (NMFS unpublished data); 3) 750 from average 2007–2011 kill in the Canadian hunt (DFO, 2013); 4) 81 from average 2007–2011 DFO scientific collections (DFO, 2013); and 5) 3,019 from average 2007–2011 removals of nuisance animals in Canada (DFO, 2013; Waring *et al.,* 2015).

Take reduction planning—Take reduction plans help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the M/SI of marine mammals incidental to commercial fishing to less than the PBR level. The long-term goal is to reduce, within five years of its implementation, the M/SI of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. NMFS convenes Take Reduction Teams to develop these plans.

For marine mammals in specified geographic region of NEFSC research programs, there are currently four take reduction plans in effect (the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and the Pelagic Longline Take Reduction Plan). As discussed earlier in the ''Proposed Mitigation'' section, the NEFSC and NEFSC cooperative research projects comply with applicable TRP mitigation measures and gear requirements specified for their respective fisheries and areas.

The Atlantic Large Whale Take Reduction Plan (ALWTRP)—The goal of this plan is to reduce mortality/serious injury (M/SI) of North Atlantic right, humpback, fin, and minke whales in several northeast fisheries that use lobster trap/pots and gillnets. Gear modification requirements and restrictions vary by location, date, and gear type but may include the use of weak links, and gear marking and configuration specifications. Detailed requirements may be found in the regional guides to gillnet and pot/trap gear fisheries available at: *http://www.greateratlantic.fisheries.noaa.gov/Protected/whaletrp/.*

Of the species/stocks of concern, the NEFSC has requested the authorization of incidental M/SI + Level A harassment for the minke whale only (see ''Estimated Take by Incidental Harassment'' later in this document).

The Bottlenose Dolphin Take Reduction Plan—The goal of this plan is to reduce M/SI of coastal bottlenose dolphins incidental to the North Carolina inshore gillnet, Southeast Atlantic gillnet, Southeastern U.S. shark gillnet, U.S. Mid-Atlantic coastal gillnet, Atlantic blue crab trap/pot, Mid-Atlantic haul/beach seine, North Carolina long haul seine, North Carolina roe mullet stop net, and Virginia pound net fisheries (71 FR 24776, April 26, 2006). The following general requirements were implemented: Spatial/temporal gillnet restrictions, gear proximity (fishermen must stay within a set distance of gear), gear modifications, non-regulatory conservation measures, and a revision to the large mesh gillnet size restriction. Detailed requirements may be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm.*

Of the species/stocks of concern, the NEFSC has requested the authorization of incidental M/SI + Level A harassment for 3 stocks of bottlenose dolphins (see ''Estimated Take by Incidental Harassment'' later in this document).

The Harbor Porpoise Take Reduction Plan—The goal of this plan is to reduce interactions between harbor porpoises and commercial gillnet gear fisheries in the New England and the Mid-Atlantic areas. Management includes seasonal time and area closures that correspond with peak seasonal abundances of harbor porpoises and gear modification requirements such as the use of pingers, floatline length, twine size, tie downs, net size, net number, and numbers of nets per string. Detailed requirements may be found at: *http://www.greateratlantic.fisheries.noaa.gov/protected/porptrp/.*

The NEFSC has requested the authorization of incidental M/SI + Level A harassment for harbor porpoises (see ''Estimated Take by Incidental Harassment'' later in this document).

The Pelagic Longline Take Reduction Plan—The plan addresses M/SI of long-finned and short-finned pilot whales as well as Risso's, common, and Atlantic white-sided dolphins in commercial pelagic longline fishing gear in the Atlantic. Regulatory measures include limiting mainline length to 20 nautical miles or less within the Mid-Atlantic Bight and posting an informational placard on careful handling and release of marine mammals in the wheelhouse and on working decks of the vessel. Detailed requirements are on the internet at: *http://www.greateratlantic.fisheries.noaa.gov/Protected/mmp/atgtrp/.*

Of the species/stocks of concern, the NEFSC has requested the authorization of incidental M/SI + Level A harassment for Risso's, common, and Atlantic white-sided dolphins (see ''Estimated Take by Incidental Harassment'' later in this document).

Unusual Mortality Events (UME)—the MMPA defines a UME as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' From 1991 to the present, there have been 22 formally recognized UMEs in the Atlantic coast region involving species under NMFS' jurisdiction. Bottlenose dolphins have been stranding at elevated rates since July 2013 along the Atlantic coast from New York to Florida (through Brevard County). All ages of bottlenose dolphins are stranding. A few live animals have stranded, but most were found dead, many times very decomposed. Many dolphins have lesions on their skin, mouth, joints, or lungs. The causes and mechanisms of this UME remain under

investigation. For more information on UMEs, please visit: *www.nmfs.noaa.gov/pr/health/mmume/.*

Of the species/stocks of concern, the NEFSC has requested the authorization of incidental M/SI + Level A harassment for 3 stocks of bottlenose dolphins (see ''Estimated Take by Incidental Harassment'' later in this document).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* gear deployment, use of active acoustic sources, visual disturbance) may impact marine mammals and their habitat. 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 an 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, and the ''Proposed Mitigation'' 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. In the following discussion, we consider potential effects to marine mammals from ship strike, physical interaction with the gear types described previously, use of active acoustic sources, and visual disturbance of pinnipeds.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. More superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans or pinnipeds are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded ninety percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kt. The chances of a lethal injury decline from approximately eighty percent at 15 kt to approximately twenty percent at 8.6 kt. At speeds below 11.8 kt, the chances of lethal injury drop below fifty percent, while the probability asymptotically increases toward one hundred percent above 15 kt.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale, NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kn near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by eighty to ninety percent.

For vessels used in NEFSC research activities, transit speeds average 10 kt (but vary from 6–14 kt), while vessel speed during active sampling is typically only 2 to 4 kt. At sampling speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike, if one occurred, is less than fifty percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is research activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while only one such incident (0.75 percent) was reported for a research vessel during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a NOAA-chartered survey vessel traveling at low speed (5.5 kt) while conducting multi-beam mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0–5.5 \times 10^{-6}$; NMFS, 2013). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans or pinnipeds to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

In summary, we anticipate that vessel collisions involving NEFSC research vessels, while not impossible, represent unlikely, unpredictable events. However, there are several preventive measures to minimize the risk of vessel collisions with right whales and other species of marine mammals. The compliance guide for the North Atlantic right whale ship strike reduction rule (NMFS, 2008) states that all vessels 65 feet in overall length or greater must slow to speeds of 10 knots or less in seasonal management areas. The Northeast U.S. Seasonal Right Whale Management Areas include: Cape Cod Bay (January 1 to May 15), Off Race Point (March 1 to April 30) and Great South Channel (April 1 to July 31). Mid-Atlantic Seasonal Management Areas include several port or bay entrances

from November 1 to April 30. When research vessels are actively sampling, cruise speeds are less than five knots, a speed at which the probability of collision and serious injury or mortality of large whales is low. When transiting between sampling stations, research vessels can travel at speeds of up to 14 knots. However, when NEFSC vessels are operating in right whale Seasonal Management Areas, Dynamic Management Areas, or at times and locations when whales are otherwise known to be present, they operate at speeds no greater than 10 knots.

NEFSC research vessel captains and crew watch for marine mammals while underway during daylight hours and take necessary actions to avoid them. NEFSC surveys using large NOAA vessels (*e.g.,* R/V *Henry B. Bigelow*) include one bridge crew dedicated to watching for obstacles at all times, including marine mammals. At any time during a survey or in transit, any bridge personnel that sights protected species that may intersect with the vessel course immediately communicates their presence to the helm for appropriate course alteration or speed reduction as possible to avoid incidental collisions, particularly with large whales (*e.g.,* North Atlantic right whales).

Finally, the Right Whale Sighting Advisory System (RWSAS) is a NMFS program designed to reduce collisions between ships and the critically endangered North Atlantic right whale by alerting mariners to the presence of the right whales. All NOAA research vessels operating in North Atlantic right whale habitat participate in the RWSAS.

No ship strikes have been reported from any fisheries research activities conducted or funded by the NEFSC in the Atlantic coast region. Given the relatively slow speeds of research vessels, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers on some surveys, and the small number of research cruises, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of research will not be discussed further in the following analysis.

Research Gear

The types of research gear used by the NEFSC were described previously under ''Detailed Description of Activity.'' Here, we broadly categorize these gears into those whose use we consider to have extremely unlikely potential to result in marine mammal interaction and those whose use we believe may result in marine mammal interaction. Gears in the latter category are carried forward for further analysis. Gears with likely potential for marine mammal interaction include high-speed midwater, pelagic, and bottom trawl nets, anchored sinking gillnets, fyke nets, and longline gear.

Trawl nets, gillnets, fyke nets, and longline gears deployed by the NEFSC are similar to gear used in various commercial fisheries, and the potential for and history of marine mammal interaction with these gears through physical contact (*i.e.,* capture or entanglement) is well-documented. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990–99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization (FAO). Although most U.S. bycatch for both cetaceans (84 percent) and pinnipeds (98 percent) occurred in gillnets, global marine mammal bycatch in trawl nets and longlines is likely substantial given that total global bycatch is thought to number in the hundreds of thousands of individuals (Read *et al.,* 2006). In addition, global bycatch via longline has likely increased, as longlines have become the most common method of capturing swordfish and tuna since the U.N. banned the use of high seas driftnets over 2.5 km long in 1991 (high seas driftnets were previously often 40–60 km long) (Read, 2008; FAO, 2001).

Marine mammals are widely regarded as being quite intelligent and inquisitive, and when their pursuit of prey coincides with human pursuit of the same resources, it should be expected that physical interaction with fishing gear may occur (*e.g.,* Beverton, 1985). Fishermen and marine mammals are both drawn to areas of high prey density, and certain fishing activities may further attract marine mammals by providing food (*e.g.,* bait, captured fish, bycatch discards) or by otherwise making it easier for animals to feed on a concentrated food source. Provision of foraging opportunities near the surface may present an advantage by negating the need for energetically expensive deep foraging dives (Hamer and Goldsworthy, 2006). Trawling, for example, can make available previously unexploited food resources by gathering prey that may otherwise be too fast or deep for normal predation, or may concentrate calories in an otherwise patchy landscape (Fertl and Leatherwood, 1997). Pilot whales, which are generally considered to be teuthophagous (*i.e.,* feeding primarily on squid), were commonly observed in association with Atlantic mackerel (*Scomber scombrus*) trawl fisheries from 1977–88 in the northeast U.S. EEZ (Waring *et al.,* 1990). Not surprisingly, stomach contents of captured whales were observed to have high proportions of mackerel (68 percent of non-trace food items), indicating that the ready availability of a novel, concentrated, high-calorie prey item resulted in changed dietary composition (Read, 1994).

These interactions can result in injury or death for the animal(s) involved and/or damage to fishing gear. Coastal animals, including various pinnipeds, bottlenose dolphins, and harbor porpoises, are perhaps the most vulnerable to these interactions. They are most likely to interact with set or passive fishing gear such as gillnets, traps (Beverton, 1985; Barlow *et al.*, 1994; Read *et al.*, 2006; Byrd *et al.*, 2014; Lewison *et al.*, 2014). Although interactions are less common for use of trawl nets and longlines, they do occur with sufficient frequency to necessitate the establishment of required mitigation measures for multiple U.S. fisheries using both types of gear (NMFS, 2014). It is likely that no species of marine mammal can be definitively excluded from the potential for interaction with fishing gear (*e.g.,* Northridge, 1984); however, the extent of interactions is likely dependent on the biology, ecology, and behavior of the species involved and the type, location, and nature of the fishery.

Trawl nets—As described previously, trawl nets are towed nets (*i.e.,* active fishing) consisting of a cone-shaped net with a codend or bag for collecting the fish and can be designed to fish at the bottom, surface, or any other depth in the water column. Here we refer to bottom trawls and midwater trawls (*i.e.,* any net not designed to tend the bottom while fishing). Trawl nets in general have the potential to capture or entangle marine mammals, which have been known to be caught in bottom trawls, presumably when feeding on fish caught therein, and in midwater trawls, which may or may not be coincident with their feeding (Northridge, 1984).

Capture or entanglement may occur whenever marine mammals are swimming near the gear, intentionally (*e.g.,* foraging) or unintentionally (*e.g.,* migrating), and any animal captured in a net is at significant risk of drowning unless quickly freed. Animals can also be captured or entangled in netting or tow lines (also called lazy lines) other than the main body of the net; animals

may become entangled around the head, body, flukes, pectoral fins, or dorsal fin. Interaction that does not result in the immediate death of the animal by drowning can cause injury (*i.e.,* Level A harassment) or serious injury. Constricting lines wrapped around the animal can immobilize the animal or injure it by cutting into or through blubber, muscles and bone (*i.e.,* penetrating injuries) or constricting blood flow to or severing appendages. Immobilization of the animal, if it does not result in immediate drowning, can cause internal injuries from prolonged stress and/or severe struggling and/or impede the animal's ability to feed (resulting in starvation or reduced fitness) (Andersen *et al.,* 2008).

Marine mammal interactions with trawl nets, through capture or entanglement, are well-documented. Dolphins are known to attend operating nets to either benefit from disturbance of the bottom or to prey on discards or fish within the net. For example, Leatherwood (1975) reported that the most frequently observed feeding pattern for bottlenose dolphins in the Gulf of Mexico involved herds following working shrimp trawlers, apparently feeding on organisms stirred up from the benthos. Bearzi and di Sciara (1997) opportunistically investigated working trawlers in the Adriatic Sea from 1990–94 and found that ten percent were accompanied by foraging bottlenose dolphins. However, midwater trawls have greater potential to capture cetaceans, because the nets may be towed at faster speeds, these trawls are more likely to target species that are important prey for marine mammals (*e.g.,* squid, mackerel), and the likelihood of working in deeper waters means that a more diverse assemblage of species could potentially be present (Hall *et al.,* 2000).

Globally, at least seventeen cetacean species are known to feed in association with trawlers and individuals of at least 25 species are documented to have been killed by trawl nets, including several large whales, porpoises, and a variety of delphinids (Karpouzli and Leaper, 2004; Hall *et al.,* 2000; Fertl and Leatherwood, 1997; Northridge, 1991). At least eighteen species of seals and sea lions are known to have been killed in trawl nets (Wickens, 1995). Generally, direct interaction between trawl nets and marine mammals (both cetaceans and pinnipeds) has been recorded wherever trawling and animals co-occur. Tables 8, 9, and 10 (later in this document) display more recent information regarding interactions specifically in U.S. fisheries and are more relevant to the development of take estimates for this proposed rule. In evaluating risk relative to a specific fishery (or comparable research survey), one must consider the size of the net as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely.

Of the net types described previously under ''Trawl Nets,'' NEFSC has recorded marine mammal interactions with the Gourock high-speed midwater rope trawl net and a 4-seam, 3-bridle bottom trawl net.

Longlines—Longlines are basically strings of baited hooks that are either anchored to the bottom, for targeting groundfish, or are free-floating, for targeting pelagic species and represent a passive fishing technique. Pelagic longlines, which notionally fish near the surface with the use of floats, may be deployed in such a way as to fish at different depths in the water column. For example, deep-set longlines targeting tuna may have a target depth of 400 m, while a shallow-set longline targeting swordfish is set at 30–90 m depth. We refer here to bottom and pelagic longlines. Any longline generally consists of a mainline from which leader lines (gangions) with baited hooks branch off at a specified interval, and is left to passively fish, or soak, for a set period of time before the vessel returns to retrieve the gear. Longlines are marked by two or more floats that act as visual markers and may also carry radio beacons; aids to detection are of particular importance for pelagic longlines, which may drift a significant distance from the deployment location. Pelagic longlines are generally composed of various diameter monofilament line and are generally much longer, and with more hooks, than are bottom longlines. Bottom longlines may be of monofilament or multifilament natural or synthetic lines.

Marine mammals may be hooked or entangled in longline gear, with interactions potentially resulting in death due to drowning, strangulation, severing of carotid arteries or the esophagus, infection, an inability to evade predators, or starvation due to an inability to catch prey (Hofmeyr *et al.,* 2002), although it is more likely that animals will survive being hooked if they are able to reach the surface to breathe. Injuries, which may include serious injury, include lacerations and puncture wounds. Animals may attempt to depredate either bait or catch, with subsequent hooking, or may become accidentally entangled. As described for trawls, entanglement can lead to constricting lines wrapped around the animals and/or immobilization, and even if entangling materials are removed the wounds caused may continue to weaken the animal or allow further infection (Hofmeyr *et al.,* 2002). Large whales may become entangled in a longline and then break free with a portion of gear trailing, resulting in alteration of swimming energetics due to drag and ultimate loss of fitness and potential mortality (Andersen *et al.,* 2008). Weight of the gear can cause entangling lines to further constrict and further injure the animal. Hooking injuries and ingested gear are most common in small cetaceans and pinnipeds but have been observed in large cetaceans (*e.g.,* sperm whales). The severity of the injury depends on the species, whether ingested gear includes hooks, whether the gear works its way into the gastrointestinal (GI) tract, whether the gear penetrates the GI lining, and the location of the hooking (*e.g.,* embedded in the animal's stomach or other internal body parts) (Andersen *et al.,* 2008). Bottom longlines pose less of a threat to marine mammals due to their deployment on the ocean bottom, but can still result in entanglement in buoy lines or hooking as the line is either deployed or retrieved. The rate of interaction between longline fisheries and marine mammals depends on the degree of overlap between longline effort and species distribution, hook style and size, type of bait and target catch, and fishing practices (such as setting/hauling during the day or at night).

The NEFSC plans to use pelagic and bottom longline gear in three programs: The Apex Predators Bottom Longline Coastal Shark, Apex Predators Pelagic Nursery Grounds Shark, and Cooperative Atlantic States Shark Pupping and Nursery (COASTSPAN) Longline surveys. The NEFSC has no recorded marine mammal interactions during the conduct of its pelagic and bottom longline surveys in the Atlantic coast region. While the NEFSC has not historically interacted with large whales or other cetaceans in its longline gear, documentation exists that some of these species are taken in commercial longline fisheries.

Gillnets and Fyke Nets—Marine mammal interactions with gillnets, through entanglement, are well-documented (Reeves *et al.,* 2013). At least 75 percent of odontocete species, 64 percent of mysticetes, 66 percent of pinnipeds, all sirenians, and marine mustelids have been recorded as gillnet bycatch over the past 20-plus years (Reeves *et al.*, 2013). Reeves *et al.*, (2013) note that numbers of marine

mammals killed in gillnets tend to be greatest for species that are widely distributed in coastal and shelf waters. Common dolphins and striped dolphins, for example, have continued to be taken in large numbers globally despite the fact that large-scale driftnet fishing on the high seas has been illegal since 1993, eliminating one source of very large bycatches of northern right whale dolphins and common dolphins (Reeves *et al.*, 2013).

Minke whales are probably especially vulnerable to gillnet entanglement for several reasons, including their near-shore and shelf occurrence, their proclivity for preying on fish species that are also targeted by net fisheries, and their small size and consequently greater difficulty (compared to the larger mysticetes) of extricating themselves once caught (Reeves *et al.,* 2013).

Entanglement in fishing gear and bycatch in commercial fisheries occur with regularity in the Northeast and Mid-Atlantic regions and are the primary known causes of mortality and serious injury for pinnipeds in these areas. Gillnets are responsible for most observed and reported bycatch for marine mammals (Lewison *et al.,* 2014; Zollett, 2009). From 2006 to 2010, the average annual mortality of harbor seals incidental to commercial fisheries was 332; 280 incidents in the Northeast sink gillnet fishery and 50 incidents reported in the Mid-Atlantic sink gillnet fishery (Waring *et al.,* 2014). Gray seal incidental mortality from 2006 to 2010 was greater, with an annual average of 853 seals, 794 of which were in the Northeast sink gillnet and 53 in the Mid-Atlantic sink gillnet fisheries (Waring *et al.*, 2014).

Although bycatch is well known and well studied in marine fisheries, there are few studies on bycatch in freshwater fisheries using fyke nets (Larocque *et al.,* 2011). Fyke nets are passive fishing gear that have limited species selectivity and are set for long durations (Hubert, 1996; Larocque *et al.,* 2011). Thus, this gear has the potential to capture non-targeted fauna that use the same habitat as targeted species, even without the use of bait (Larocque *et al.,* 2011). Mortality in fyke nets can arise from stress and injury associated with anoxia, abrasion, confinement, and starvation (Larocque *et al.,* 2011).

Of the gear types described previously under ''Gillnets and Fyke Nets'' NEFSC has recorded marine mammal interactions with anchored sinking gillnets and fyke nets.

Other research gear—We discussed the potential for interactions with research gear in the previous sections. All other gears used in NEFSC fisheries research (*e.g.,* a variety of plankton nets, CTDs, ROVs) do not have the expected potential for marine mammal interactions, and are not known to have been involved in any marine mammal interaction anywhere. Specifically, we consider CTDs, XBTs, CUFES, ROVs, small trawls (Oozeki, IKMT, MOCNESS, and Tucker trawls), plankton nets (Bongo, Pairovet, and Manta nets), and vertically deployed or towed imaging systems to be no-impact gear types.

Unlike trawl nets and longline gear, which are used in both scientific research and commercial fishing applications, these other gears are not considered similar or analogous to any commercial fishing gear and are not designed to capture any commercially salable species, or to collect any sort of sample in large quantities. They are not considered to have the potential to take marine mammals primarily because of their design and how they are deployed. For example, CTDs are typically deployed in a vertical cast on a cable and have no loose lines or other entanglement hazards. A Bongo net is typically deployed on a cable, whereas neuston nets (these may be plankton nets or small trawls) are often deployed in the upper one meter of the water column; either net type has very small size (*e.g.,* two bongo nets of 0.5 m^2 each or a neuston net of approximately 2 m^2) and no trailing lines to present an entanglement risk. These other gear types are not considered further in this document.

Acoustic Effects

We previously provided general background information on sound and the specific sources used by the NEFSC (see ''Description of Active Acoustic Sound Sources''). Here, we first provide background information on marine mammal hearing before discussing the potential effects of NEFSC use of active acoustic sources on marine mammals.

Marine mammal hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for low-frequency cetaceans. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (up to 30 kHz in some species), with best hearing estimated to be from 100 Hz to 8 kHz (Watkins, 1986; Ketten, 1998; Houser *et al.,* 2001; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten *et al.,* 2007; Parks *et al.,* 2007a; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz (Johnson, 1967; White, 1977; Richardson *et al.,* 1995; Szymanski *et al.,* 1999; Kastelein *et al.,* 2003; Finneran *et al.,* 2005a, 2009; Nachtigall *et al.,* 2005, 2008; Yuen *et al.,* 2005; Popov *et al.,* 2007; Au and Hastings, 2008; Houser *et al.,* 2008; Pacini *et al.,* 2010, 2011; Schlundt *et al.,* 2011);
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* including the hourglass dolphin, on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.,* 2009, 2010; Tougaard *et al.,* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz (Popov and Supin, 1990a, b; Kastelein *et al.,* 2002; Popov *et al.,* 2005); and
- Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz, with best hearing between 1–50 kHz (Mohl, 1968; Terhune and Ronald, 1971, 1972; Richardson *et al.,* 1995; Kastak and Schusterman, 1999; Reichmuth, 2008; Kastelein *et al.,* 2009);
- Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 100 Hz and 40 kHz for Otariidae, with best hearing between 2–48 kHz (Schusterman *et al.,* 1972; Moore and Schusterman, 1987; Babushina *et al.,* 1991; Richardson *et al.,* 1995; Kastak and Schusterman, 1998; Kastelein *et al.,*

2005a; Mulsow and Reichmuth, 2007; Mulsow *et al.,* 2011a, b).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemila *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

Within the Atlantic coast region, 37 marine mammal species (33 cetacean and 4 pinniped [0 otariid and 4 phocid] species) have the potential to co-occur with NEFSC research activities. Please refer to Table 3. Of the 37 cetacean species that may be present, six are classified within the low-frequency functional hearing group (*i.e.,* all mysticete species), 24 are classified within the mid-frequency functional hearing group (*i.e.,* all delphinidae and ziphiidae species and the sperm whale), three are classified within the high-frequency functional hearing group (*i.e.,* habor porpoise and *Kogia* spp.); and four are classified within the pinnipeds in water functional hearing group

Potential effects of underwater sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the NEFSC's use of active acoustic sources (*e.g.,* echosounders).

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that the NEFSC's use of active acoustic sources may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007). NEFSC activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a ''stranding'' (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.,* Geraci *et al.,* 1999). However, the cause or causes of most strandings are unknown (*e.g.,* Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.,* Sih *et al.,* 2004). For further description of stranding events see, *e.g.,* Southall *et al.,* 2006; Jepson *et al.,* 2013; Wright *et al.,* 2013.

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS,

the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the data published at the time of this writing concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower, and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale [*Delphinapterus leucas*], harbor porpoise, and Yangtze finless porpoise [*Neophocoena asiaeorientalis*]) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship

between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress

responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential effects of NEFSC activity—As described previously (see ''Description of Active Acoustic Sound Sources''), the NEFSC proposes to use various active acoustic sources, including echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers). These acoustic sources, which are present on most NEFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers.

Many typically investigated acoustic sources (*e.g.,* seismic airguns, low- and mid-frequency active sonar used for military purposes, pile driving, vessel noise)—sources for which certain of the potential acoustic effects described above have been observed or inferred—produce signals that are either much lower frequency and/or higher total energy (considering output sound levels and signal duration) than the high-frequency mapping and fish-finding systems used by the NEFSC. There has been relatively little attention given to the potential impacts of high-frequency sonar systems on marine life, largely because their combination of high output frequency and relatively low output power means that such systems are less likely to impact many marine species. However, some marine mammals do hear and produce sounds within the frequency range used by these sources and ambient noise is much lower at high frequencies, increasing the probability of signal detection relative to other sounds in the environment.

As noted above, relatively high levels of sound are likely required to cause TTS in most pinnipeds and odontocete cetaceans. While dependent on sound exposure frequency, level, and duration, NMFS' acoustics experts believe that existing studies indicate that for the kinds of relatively brief exposures potentially associated with transient sounds such as those produced by the active acoustic sources used by the NEFSC, SPLs in the range of approximately 180–220 dB rms might be required to induce onset TTS levels for most species (NEFSC, 2014). However, it should be noted that there may be increased sensitivity to TTS for certain species generally (harbor porpoise; Lucke *et al.,* 2009) or specifically at higher sound exposure frequencies, which correspond to a species' best hearing range (20 kHz vs. 3 kHz for bottlenose dolphins; Finneran and Schlundt, 2010). However, for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not

be categorized as physiologically damaging (NEFSC, 2014). The corresponding estimates for PTS would be at very high received levels that would rarely be experienced in practice.

Based on discussion provided by Southall *et al.* (2007), Lurton and DeRuiter (2011) modeled the potential impacts of conventional echosounders on marine mammals, estimating PTS onset at typical distances of 10–100 m for the kinds of sources considered here. Kremser *et al.* (2005) modeled the potential for TTS in blue, sperm, and beaked whales (please see Kremser *et al.* [2005] for discussion of assumptions regarding TTS onset in these species) from a multibeam echosounder, finding similarly that TTS would likely only occur at very close ranges to the hull of the vessel. The authors estimated ship movement at 12 kn (faster than NEFSC vessels would typically move), which would result in an underestimate of the potential for TTS to occur, but the modeled system (Hydrosweep) operates at lower frequencies and with a wider beam pattern than do typical NEFSC systems, which would result in a likely more significant overestimate of TTS potential. The results of both studies emphasize that these effects would very likely only occur in the cone ensonified below the ship and that animal responses to the vessel (sound or physical presence) at these extremely close ranges would very likely influence their probability of being exposed to these levels. At the same distances, but to the side of the vessel, animals would not be exposed to these levels, greatly decreasing the potential for an animal to be exposed to the most intense signals. For example, Kremser *et al.* (2005) note that SPLs outside the vertical lobe, or beam, decrease rapidly with distance, such that SPLs within the horizontal lobes are about 20 dB less than the value found in the center of the beam. For certain species (*i.e.,* odontocete cetaceans and especially harbor porpoises), these ranges may be somewhat greater based on more recent data (Lucke *et al.,* 2009; Finneran and Schlundt, 2010) but are likely still on the order of hundreds of meters. In addition, potential behavioral responses further reduce the already low likelihood that an animal may approach close enough for any type of hearing loss to occur.

Various other studies have evaluated the environmental risk posed by use of specific scientific sonar systems. Burkhardt *et al.* (2007) considered both the Hydrosweep system evaluated by Kremser *et al.* (2005) and the Simrad EK60, which is used by the NEFSC, and concluded that direct injury (*i.e.,* sound energy causes direct tissue damage) and indirect injury (*i.e.,* self-damaging behavior as response to acoustic exposure) would be unlikely given source and operational use (*i.e.,* vessel movement) characteristics, and that any behavioral responses would be unlikely to be significant. Similarly, Boebel *et al.* (2006) considered the Hydrosweep system in relation to the risk for direct or indirect injury, concluding that (1) risk of TTS (please see Boebel *et al.* [2006] for assumptions regarding TTS onset) would be less than two percent of the risk of ship strike and (2) risk of behaviorally-induced damage would be essentially nil due to differences in source characteristics between scientific sonars and sources typically associated with stranding events (*e.g.,* mid-frequency active sonar, but see discussion of Madagascar stranding event below). It should be noted that the risk of direct injury may be greater when a vessel operates sources while on station (*i.e.,* stationary), as there is a greater chance for an animal to receive the signal when the vessel is not moving.

Boebel *et al.* (2005) report the results of a workshop in which a structured, qualitative risk analysis of a range of acoustic technology was undertaken, specific to use of such technology in the Antarctic. The authors assessed a single-beam echosounder commonly used for collecting bathymetric data (12 kHz, 232 dB, 10° beam width), an array of single-beam echosounders used for mapping krill (38, 70, 120, and 200 kHz; 230 dB; 7° beam width), and a multibeam echosounder (30 kHz, 236 dB, 150° x 1° swath width). For each source, the authors produced a matrix displaying the severity of potential consequences (on a six-point scale) against the likelihood of occurrence for a given degree of severity. For the former two systems, the authors determined on the basis of the volume of water potentially affected by the system and comparisons between its output and available TTS data that the chance of TTS is only in a small volume immediately under the transducers, and that consequences of level four and above were inconceivable, whereas level one consequences (''Individuals show no response, or only a temporary (minutes) behavior change'') would be expected in almost all instances. Some minor displacement of animals in the immediate vicinity of the ship may occur. Boebel *et al.* (2005) note an increase in the likelihood of animal displacement because of the high output and broad width of the swath (abeam of the vessel) of the multibeam echosounder. However, the fore and aft beam width is small and the pulse length very short, so the risk of ensonification above TTS levels is still considered quite small and the likelihood of auditory or other injuries low. In general, the authors reached the same conclusions described for the single-beam systems, but note that more severe impacts—including fatalities resulting from herding of sensitive species in narrow sea ways—are at least possible (*i.e.,* may occur in exceptional circumstances). However, the probability of herding remains low not just because of the rarity of the necessary confluence of species, bathymetry, and likely other factors, but because the restricted beam shape makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel (Boebel *et al.,* 2005).

We have, however, considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from the NEFSC use of the multibeam echosounder, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder; it is important to note that all NEFSC sources operate at higher frequencies [see Table 2]) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system.

The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these

animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event.

The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for scientific applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Characteristics of the sound sources predominantly used by the NEFSC further reduce the likelihood of effects to marine mammals, as well as the intensity of effect assuming that an animal perceives the signal. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). In addition, intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). Although echosounder pulses are, in general, emitted rapidly, they are not dissimilar to odontocete echolocation click trains. Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would indeed perceive echosounder signals as being intermittent.

We conclude here that, on the basis of available information on hearing and potential auditory effects in marine mammals, high-frequency cetacean species would be the most likely to potentially incur temporary hearing loss from a vessel operating high-frequency sonar sources, and the potential for PTS to occur for any species is so unlikely as to be discountable. Even for high-frequency cetacean species, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Additionally, given that behavioral responses typically include the temporary avoidance that might be expected (see below), the potential for auditory effects considered physiological damage (injury) is considered extremely low in relation to realistic operations of these devices. Given the fact that fisheries research survey vessels are moving, the likelihood that animals may avoid the vessel to some extent based on either its physical presence or due to aversive sound (vessel or active acoustic sources), and the intermittent nature of many of these sources, the potential for TTS is probably low for high-frequency cetaceans and very low to zero for other species.

Based on the source operating characteristics, most of these sources may be detected by odontocete cetaceans (and particularly high-frequency specialists such as porpoises) but are unlikely to be audible to mysticetes (*i.e.,* low-frequency cetaceans) and most pinnipeds. While low-frequency cetaceans and pinnipeds have been observed to respond behaviorally to low- and mid-frequency sounds (*e.g.,* Frankel, 2005), there is little evidence of behavioral responses in these species to high-frequency sound exposure (*e.g.,* Jacobs and Terhune, 2002; Kastelein *et al.,* 2006). If a marine mammal does perceive a signal from a NEFSC active acoustic source, it is likely that the response would be, at most, behavioral in nature. Behavioral reactions of free-ranging marine mammals to scientific sonars are likely to vary by species and circumstance. For example, Watkins *et al.* (1985) note that sperm whales did not appear to be disturbed by or even aware of signals from scientific sonars and pingers (36–60 kHz) despite being very close to the transducers, but Gerrodette and Pettis (2005) report that, when a 38-kHz echosounder and ADCP were on (1) the average size of detected schools of spotted dolphins and pilot whales was decreased; (2) perpendicular sighting distances increased for spotted and spinner dolphins; and (3) sighting rates decreased for beaked whales. As described above, behavioral responses of marine mammals are extremely variable, depending on multiple exposure factors, with the most common type of observed response being behavioral avoidance of areas around aversive sound sources. Certain odontocete cetaceans (particularly harbor porpoises and beaked whales) are known to avoid high-frequency sound sources in both field and laboratory settings (*e.g.,* Kastelein *et al.,* 2000, 2005b, 2008a, b; Culik *et al.,* 2001; Johnston, 2002; Olesiuk *et al.,* 2002; Carretta *et al.,* 2008). There is some additional, low probability for masking to occur for high-frequency specialists, but similar factors (directional beam pattern, transient signal, moving vessel) mean that the significance of any potential masking is probably inconsequential.

Potential Effects of Visual Disturbance

The NEFSC anticipates that some trawl, fyke net, and beach seine surveys may disturb a small number of pinnipeds during the conduct of these activities in upper Penobscot Bay above Fort Point Ledge, ME. Pinnipeds are expected to be hauled out on tidal ledges and at times may experience incidental close approaches by the survey vessel and/or researchers during the course of its fisheries research activities. The NEFSC expects that some of these animals will exhibit a behavioral response to the visual stimuli (*e.g.,* including alert behavior, movement, vocalizing, or flushing). NMFS does not consider the lesser reactions (*e.g.,* alert behavior) to constitute harassment. These events are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur.

In areas where disturbance of haul-outs due to periodic human activity

(*e.g.,* researchers approaching on foot, passage of small vessels, maintenance activity) occurs, monitoring results have generally indicated that pinnipeds typically move or flush from the haul-out in response to human presence or visual disturbance, although some individuals typically remain hauled-out (*e.g.,* SCWA, 2012). The nature of response is generally dependent on species. For example, California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous sites. Monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010).

Upon the occurrence of low-severity disturbance (*i.e.,* the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the haul-out within minutes to hours of the stimulus.

In a popular tourism area of the Pacific Northwest where human disturbances occurred frequently, past studies observed stable populations of seals over a twenty-year period (Calambokidis *et al.,* 1991). Despite high levels of seasonal disturbance by tourists using both motorized and non-motorized vessels, Calambokidis *et al.* (1991) observed an increase in site use (pup rearing) and classified this area as one of the most important pupping sites for seals in the region. Another study observed an increase in seal vigilance when vessels passed the haul-out site, but then vigilance relaxed within ten minutes of the vessels' passing (Fox, 2008). If vessels passed frequently within a short time period (*e.g.,* 24 hours), a reduction in the total number of seals present was also observed (Fox, 2008).

Level A harassment, serious injury, or mortality could likely only occur as a result of trampling in a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) or abandonment of pups. However, given the nature of potential disturbance—which would entail the gradual and highly visible approach of a small vessel and small research crew—we would expect that pinnipeds would exhibit a gradual response escalation, and that stampeding or abandonment of pups would likely not be an issue.

Disturbance of pinnipeds caused by NEFSC survey activities—which are sparsely distributed in space and time—would be expected to last for only short periods of time, separated by significant amounts of time in which no disturbance occurred. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

Anticipated Effects on Marine Mammal Habitat

Effects to prey—In addition to direct, or operational, interactions between fishing gear and marine mammals, indirect (*i.e.,* biological or ecological) interactions occur as well, in which marine mammals and fisheries both utilize the same resource, potentially resulting in competition that may be mutually disadvantageous (*e.g.,* Northridge, 1984; Beddington *et al.,* 1985; Wickens, 1995). Marine mammal prey varies by species, season, and location and, for some, is not well documented. NEFSC fisheries research removals of species commonly utilized by marine mammals are relatively low. Prey of right whales, sei whales, and blue whales are primarily zooplankton, which are not directly targeted by NEFSC fisheries research, thus the likelihood of research activities changing prey availability is unlikely. There is some overlap in prey of humpback and fin whales (*e.g.,* Atlantic herring and sandeels) and possibly sperm whales (squid).

The removal by NEFSC fisheries research, regardless of season and location is, however, insignificant relative to that taken through commercial fisheries (See Section 4.2.3 of the NEFSC EA for more information on fish catch during research surveys). For example, the 2009 research catch of Atlantic herring in the GOM/GB represented 0.009% of the 2010 Allowable Biological Catch (ABC) for commercial harvest. Similarly, research catch of Atlantic mackerel in 2009 equaled 0.001% of the 2010 ABC and research catch for longfin squid was 0.021% of ABC.

The total prey removal by all NEFSC fisheries research surveys and projects, regardless of season and location across the Atlantic Coast region, totals a few hundreds of tons of fish per year (Table 4.2–8), which is a negligible percentage of the estimated fish consumed by cetaceans. The NEFSC research catch of invertebrate prey is also small; the average annual NEFSC research catch of long-finned squid was less than 12 tons (See Table 4.2–19 of the NEFSC EA for more information).

In addition to the small total biomass taken, some of the size classes of fish targeted in research surveys are smaller than that generally targeted by marine mammals. Research catches are also distributed over a wide area because of the random sampling design covering large sample areas. Fish removals by research are therefore highly localized and unlikely to affect the spatial concentrations and availability of prey for any marine mammal species. This is especially true for pinnipeds in the Atlantic coast region, which are opportunistic predators that consume a wide assortment of fish and squid. With pinniped populations increasing and ranges expanding in New England, food availability does not appear to be a limiting factor (Baraff and Loughlin, 2000).

In the southern portion of the Atlantic coast region, NEFSC-affiliated fisheries research is primarily related to catch, tag, and release studies of sharks, with minimal numbers of finfish collected for lab analysis. This level of effort would have no impact on prey sources for marine mammals in southern portion of the Atlantic coast region.

Acoustic habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the

marine environment for data acquisition purposes (as in the NEFSC's use of active acoustic sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). As described above (''Acoustic Effects''), the signals emitted by NEFSC active acoustic sources are generally high frequency, of short duration, and transient. These factors mean that the signals will attenuate rapidly (not travel over great distances), may not be perceived or affect perception even when animals are in the vicinity, and would not be considered chronic in any given location. The NEFSC's use of these sources is widely dispersed in both space and time. In conjunction with the prior factors, this means that it is highly unlikely that the NEFSC's use of these sources would, on their own, have any appreciable effect on acoustic habitat. Sounds emitted by NEFSC vessels would be of lower frequency and continuous, but would also be widely dispersed in both space and time. NEFSC vessel traffic—including both sound from the vessel itself and from the active acoustic sources—is of very low density compared to commercial shipping traffic or commercial fishing vessels and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment.

Physical habitat—Fishing gear that contacts the seafloor can alter and/or physically damage seafloor habitat. Physical damage includes furrowing and smoothing of the seafloor as well as the displacement of rocks and boulders as fishing gear is towed across the bottom (Morgan and Chuenpagdee, 2003). Physical damage to the seafloor can increase with multiple tows in the same area (Stevenson *et al.,* 2004). Bottom contact fishing gear historically used in NEFSC fishery research activities includes bottom trawls, otter trawls, sea scallop dredges, and hydraulic surfclam dredges. Short-term cooperative research projects have also used pot gear for research on scup and sea bass as well as lobsters. The NEFSC has historically conducted bottom trawls in the Gulf of Maine, Georges Bank, Mid-Atlantic Bight, and southern New England subareas of the Atlantic coast region during each season. However, bottom trawl effort is generally lower in the winter relative to other seasons. The NEFSC has also used dredges in each of the Atlantic coast region subareas previously identified; however, dredging is restricted to spring, summer, and fall seasons. The geographic extent of any physical contact with benthic habitats caused by NEFSC fisheries research activities would be much less than two percent of the NEFSC research area. Physical damage to the seafloor typically recovers within 18 months through the action of water currents and natural sedimentation, with the exception of rock and boulder displacement (Stevenson *et al.,* 2004).

The seafloor in the specified geographic region is comprised primarily of silt, sand, clay, gravel, and boulders. Any physical damage caused by NEFSC fisheries research survey activities in these substrates would be expected to recover within 18 months (Stevenson *et al.,* 2004). The geographic area directly affected by NEFSC bottom trawl and dredge surveys in 2008 was estimated to be about 70 square miles, an unusually high amount due to the need for extra calibration trials with a new vessel. More typical coverage is estimated to be about 50 square miles per year (NEFSC, 2014). The area affected by research each year is a very small fraction of the total area of each of the Atlantic coast subregions (see Table 4.2–2 in the NEFSC's draft EA). The GOM covers an area of approximately 35,000 mi^2, the GB covers more than 16,000 square miles, the SNE subregion covers approximately 30,500 square miles, and the MAB covers approximately 32,000 square miles. Bottom disturbance resulting from annual NEFSC fisheries research activity with trawl and dredge gear would affect less than 0.05 percent of the total area of each Atlantic coast subregion (See Table 4.2–2 of the NEFSC EA for more information).

The geographical area directly affected by NEFSC bottom trawl and dredge surveys every year is estimated to be about 181 km^2. In addition, cooperative research activities not contributable to commercial fishing is likely to affect 150 to 250 km^2 each year. The area affected by research each year is a very small fraction of the total area involved in survey efforts.

Soft bottom habitats are typically less affected by pot gear than vegetated or hard bottom habitats (Barnette, 2001). Weights and anchors associated with fishing pots may physically damage fragile species such as coarls, which are more common in rocky substrates (Macdonald *et al.,* 1996, Eno *et al.,* 2001). Although pot gear may be deployed in some hard bottom habitats that are not suitable for trawling or dredging, its use is not limited to rocky substrates and data on the substrate for each pot used in past research is not available for quantitative estimates by habitat type. Overall, the effect of pot gear used for NEFSC fisheries research on benthic habitats is expected to be very small, especially compared to the number of pots used for commercial fisheries in the Northeast.

As described in the preceding section, the potential for NEFSC research to affect the availability of prey to marine mammals or to meaningfully impact the quality of acoustic habitat is considered to be insignificant for all species, in the specified geographical region. Effects to habitat will not be discussed further in this document.

Estimated Take by Incidental Harassment, Serious Injury, or Mortality

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Serious injury means any injury that will likely result in mortality (50 CFR 216.3).

Take of marine mammals incidental to NEFSC research activities could occur as a result of: (1) Injury or mortality due to gear interaction; (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds hauled out on the shoreline resulting from close proximity of research vessels (Level B harassment only).

Estimated Take Due to Gear Interaction

Historical Interactions—In order to estimate the number of potential incidents of take that could occur by M/SI + Level A through gear interaction, we first consider the NEFSC's past record of such incidents, and then consider in addition other species that may have similar vulnerabilities to the NEFSC's trawl, gillnet, and fyke net gear for which we have historical interaction records. We describe historical interactions with NEFSC research gear in Tables 4, 5, and 6. Available records are for the years 2004 through the present. Please see Figure 4.2–2 in the NEFSC EA for specific locations of these incidents.

TABLE 4—HISTORICAL INTERACTIONS WITH TRAWL GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Gourock high speed midwater rope trawl.	Atlantic Herring Survey	10/8/2004	Short-beaked common dolphin (Western NA stock).	2	0	2
Bottom trawl (4-seam, 3 bridle).	NEFSC Standard Bottom Trawl Survey.	11/11/2007	Short-beaked common dolphin (Western NA stock).	1	0	1
Gourock high speed midwater rope trawl.	Atlantic Herring Survey	10/11/2009	Minke whale	0	[1] 1	1
Bottom trawl (4-seam, 3 bridle).	Spring Bottom Trawl Survey.	4/4/15	Gray seal	[2] 1	0	1
Total individuals captured (total number of interactions given in parentheses)			Short-beaked common dolphin (3).	3	0	3
			Minke whale (1)	0	1	1
			Gray seal (1)	1	0	1

[1] According to the incident report, ''The net's cod end and whale were brought aboard just enough to undo the cod end and free the whale. It was on deck for about five minutes. While on deck, it was vocalizing and moving its tail up and down. The whale swam away upon release and appeared to be fine. Estimated length was 19 feet.'' The NEFSC later classified this incidental take as a serious injury using NMFS criteria for such determinations published in January 2012 (Cole and Henry, 2013).

[2] The NEFSC filed an incident report for this incidental take on April 4, 2015.

TABLE 5—HISTORICAL INTERACTIONS WITH GILLNET GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Gillnet	COASTSPAN	11/29/2008	Common Bottlenose dolphin (Northern South Carolina Estuarine System stock) [1].	1	0	1
Gillnet	NEFOP Observer Gillnet Training Trips.	5/4/2009	Gray seal	1	0	1
Gillnet	NEFOP Observer Gillnet Training Trips.	5/4/2009	Harbor porpoise	1	0	1
Total individuals captured (total number of interactions given in parentheses)			Bottlenose dolphin (1)	1	0	1
			Gray seal (1)	1	0	1
			Harbor porpoise (1)	1	0	1

[1] In 2008, the COASTSPAN gillnet survey caught and killed one common bottlenose dolphin in 2008 while a cooperating institution was conducting the survey in South Carolina. This was the only occurrence of incidental take in these surveys. Although no genetic information is available from this dolphin, based on the location of the event, NMFS retrospectively assigned this mortality to the Northern South Carolina Estuarine System stock in 2015 from the previous classification as the western North Atlantic stock (Waring *et al.,* 2014).

TABLE 6—HISTORICAL INTERACTIONS WITH FYKE NET GEAR

Gear	Survey	Date	Species	Number killed	Number released alive	Total
Fyke Net	Maine Estuaries Diadromous Survey.	10/25/2010	Harbor seal	1	0	1
Total				1	0	1

The NEFSC has no recorded interactions with any gear other than midwater and bottom trawl, gillnet, and fyke net gears. As noted previously in ''Potential Effects of the Specified Activity on Marine Mammals,'' we anticipate future interactions with the same gear types.

In order to use these historical interaction records in a precautionary manner as the basis for the take estimation process, and because we

have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality.

During trawl surveys, the NEFSC has recorded interactions with short-beaked common dolphins (Western North Atlantic stock; two total interactions with three individual animals); minke whale (one total interaction with one animal); and gray seal (one total interaction with one animal). Common dolphins are the species most likely to interact with NEFSC trawl gear with an average of 1.5 dolphins captured per interaction.

During gillnet surveys, the NEFSC has recorded interactions with short-beaked common dolphins (Northern South Carolina Estuarine System stock; one total interaction with one animal); gray seal (one total interaction with one animal); and harbor porpoise (one total interaction with one animal).

During one fyke net survey in 2010, the NEFSC recorded one interaction with one harbor seal. Since this recorded interaction, the NEFSC now requires the use of marine mammal excluder devices as a mitigation measure for this gear type.

In order to produce the most precautionary take estimates possible, we use here the most recent 11 years of data (*e.g.,* 2004–15).

In order to estimate the potential number of incidents of M/SI + Level A that could occur incidental to the NEFSC's use of midwater and bottom trawl, gillnet, fyke net, and longline gear in the Atlantic coast region over the five-year period from 2015–20, we first look at the six species described that have been taken historically and then evaluate the potential vulnerability of additional species to these gears.

Table 7 shows the 11-year annual average captures of these six species and the projected five-year totals for this proposed rule, for trawl, gillnet, and fyke net gear. In order to produce precautionary estimates, we calculate the annual average for the 11-year period (2004–2015) and round up the annual to the nearest whole number. Because the NEFSC requests take for a five-year period, we multiply the annual average by five and assume that this number may be taken within the effective five-year period of the proposed authorization.

To date, infrequent interactions of trawl nets, gillnets, pelagic and bottom longline, and fyke net gears with marine mammals have occurred in the Atlantic coast region during NEFSC research activities. The NEFSC interaction rates have exhibited some inter-annual variation in numbers, possibly due to changing marine mammal densities and distributions and dynamic oceanographic conditions. This approach is precautionary. Estimating takes of species captured historically will produce an estimate higher than the historic average take for each species taken incidentally during past NEFSC research. We use this methodology to ensure accounting for the maximum amount of potential take in the future as well as accounting for the fluctuations in inter-annual variability observed during the 11-year time period. Moreover, these estimates are based on the assumption that annual effort over the proposed five-year authorization period will not exceed the annual effort during the period 2004–2015.

TABLE 7—ANNUAL AVERAGE CAPTURES (2004–15) AND PROJECTED FIVE-YEAR TOTAL FOR HISTORICALLY-CAPTURED SPECIES

Gear	Species	2004	05	06	07	08	09	10	11	12	13	14	15	Avg. per year	Projected 5-year total [1]
Trawl	Short-beaked common dolphin.	2	0	0	1	0	0	0	0	0	0	0	0	0.27	5
	Minke whale	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
	Gray seal	0	0	0	0	0	0	0	0	0	0	0	1	0.09	5
Gillnet	Common bottlenose dolphin.	0	0	0	0	1	0	0	0	0	0	0	0	0.09	[2] 5
	Harbor porpoise	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
	Gray seal	0	0	0	0	0	1	0	0	0	0	0	0	0.09	5
Fyke net	Harbor seal	0	0	0	0	0	0	1	0	0	0	0	0	0.09	5

[1] The estimated total is the product of the 2004–2015 annual average rounded up to the nearest whole number and multiplied by the five-year timespan of the proposed rule.

[2] The projected 5-year total includes an estimate of 5 each for the Western North Atlantic offshore, the Western North Atlantic Northern Migratory Coastal, and the Western North Atlantic Southern Migratory Coastal stocks of common bottlenose dolphins. The NEFSC is not requesting take for the estuarine stocks of bottlenose dolphins for the COASTPAN longline and gillnet surveys. In 2008, the COASTSPAN gillnet survey caught and killed one common bottlenose dolphin in 2008 while a cooperating institution was conducting the survey in South Carolina. This was the only occurrence of incidental take in these surveys. Although no genetic information is available from this dolphin, based on the location of the event, NMFS retrospectively assigned this mortality to the Northern South Carolina Estuarine System stock in 2015 from the previous classification as the western North Atlantic stock (Waring *et al.,* 2014).

As background to the process of determining which species not historically taken may have sufficient vulnerability to capture in NEFSC gear to justify inclusion in the take authorization request, we note that the NEFSC is NMFS' research arm in the Greater Atlantic region which we consider as a leading source of expert knowledge regarding marine mammals (*e.g.,* behavior, abundance, density) in the areas where the NEFSC operates. The NEFSC formulated the take requests for species selected by NEFSC subject matter experts who based their selections on the best available information. We have concurred with these decisions.

In order to evaluate the potential vulnerability of additional species to trawl, gillnet, fyke net, and longline gear, we first consulted NMFS' List of Fisheries (LOF), which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. We provide this information, as presented in the 2015 LOF (79 FR 77919; January 28, 2015), in Tables 8, 9, and 10. In order to simplify information presented, and to encompass information related to other similar species from different locations, we group marine mammals by genus (where there is more than one member of the genus found in U.S. waters). For confirmed and documented incidents of M/SI incidental to relevant commercial fisheries, we note whether we believe those incidents provide sufficient basis upon which to infer vulnerability to capture in NEFSC research gear. More

information is available on the Internet at: *www.nmfs.noaa.gov/pr/interactions/lof/.*

TABLE 8—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR PELAGIC AND BOTTOM TRAWL GEAR FOR RELEVANT SPECIES

Species [1]	Pelagic trawl [2]	Location/Fishery [3]	Vulnerability inferred? [4]	Bottom trawl [2]	Location/fishery [3]	Vulnerability inferred? [4]
Humpback whale	Y	AK BSAI pollock trawl (1).	N	N	AK/BSAI flatfish trawl (0.2), BSAI pollock trawl (0.2).	N.
North Atlantic right whale	N	n/a	N	N	n/a	N.
Minke whale [5]	N	n/a	N	Y	NE bottom trawl (1.8)	Y.
Sei whale	N	n/a	N	N	n/a	N.
Blue whale	N	n/a	N	N	n/a	N.
Fin whale	N	n/a	N	N	n/a	N.
Sperm whale	N	n/a	n/a	N	n/a	n/a.
Kogia spp.	N	n/a	n/a	N	n/a	n/a.
Cuvier's beaked whale	N	n/a	n/a	N	n/a	n/a.
Mesoplodon spp.	N	n/a	n/a	N	n/a	n/a.
Delphinis spp.	Y	MA midwater trawl (3.2), NE midwater trawl (0).	Y	Y	MA bottom trawl (19)	Y.
Common bottlenose dolphin	N	MA mid-water trawl (0).	N	Y	MA bottom trawl (20) NE bottom trawl (20)	Y.
Pygmy killer whale	N	n/a	n/a	N	n/a	n/a.
Short-finned pilot whale	Y	MA mid-water trawl (2.4) NE midwater trawl (4).	N	Y	NE bottom trawl (29)	N.
Long-finned pilot whale	Y	MA mid-water trawl (2.4) NE midwater trawl (4).	N	N	n/a	n/a.
Risso's dolphin	Y	MA mid-water trawl (0.2).	Y	Y	NE bottom trawl (2.5) MA bottom trawl (42)	Y.
Pantropical spotted dolphin	N	n/a	n/a	N	n/a	n/a.
Fraser's dolphin	N	n/a	n/a	N	n/a	n/a.
Atlantic white-sided dolphin	Y	MA mid-water trawl (6).	Y	Y	NE bottom trawl (73) MA bottom trawl (4)	Y.
White-beaked dolphin	N	n/a	N	Y	n/a	N.
Killer whale	N	n/a	n/a	N	BSAI flatfish trawl (0.4), BSAI rockfish trawl (0.2).	N.
Melon-headed whale	N	n/a	n/a	N	n/a	n/a.
Pantropical spotted dolphin	N	n/a	n/a	N	n/a	n/a.
Atlantic spotted dolphin	N	n/a	Y	N	n/a	n/a.
All other *Stenella* spp	N	n/a	n/a	N	n/a	n/a.
Rough-toothed dolphin	N	n/a	n/a	N	n/a	n/a.
Melon-headed whale	N	n/a	n/a	N	n/a	n/a.
Harbor porpoise	N	n/a	N	Y	NE bottom trawl (4.5) AK/BSAI flatfish trawl (0.36)	Y.
Hooded seal	N	n/a	n/a	N	n/a	n/a.
Gray seal	Y	MA mid-water trawl (0.2).	Y	Y	NE bottom trawl (9.2)	Y.
Harbor seal	Y	AK BSAI pollock trawl (0.3), NE midwater trawl (0.7).	Y	Y	AK/BSAI flatfish trawl (0.36) MA bottom trawl (0.2) NE bottom trawl (0.8)	Y.
Harp seal	N	MA mid-water trawl (0).	N	Y	NE bottom trawl (0.4)	N.

[1] Please refer to Table 3 for taxonomic reference.

[2] Indicates whether any member of the genus has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available.

[3] Values in parentheses represent the mean annual estimate of M/SI for that fishery in the most recent five-year timespan for which data is available (2007–11 in most cases). An interaction may be prorated if it is documented as an injury but the severity of the injury is unknown (*e.g.,* one entanglement may be estimated as 0.75 M/SI). Where there is less than one hundred percent observer coverage, documented M/SI is extrapolated to produce whole-fishery estimates. Associated CVs are not presented here; please refer to relevant SARs for more information. Some species have zero M/SI for 2007–11, but remain listed on that fishery's current list of marine mammal species/stocks injured/killed due to older interactions.

[4] Where there are no documented incidents of M/SI incidental to relevant commercial fisheries, this is not applicable.

[5] One minke whale was captured in a midwater trawl and released alive by NMFS' Northeast Fisheries Science Center in 2009. It was later determined that this capture constituted a serious injury.

TABLE 9—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR LONGLINE GEAR FOR RELEVANT SPECIES

Species [1]	Longlines [2]	Location/Fishery [3]	Vulnerability inferred? [4]
Humpback whale	Y	HI shallow-set longline (0.75)	N.
North Atlantic right whale	N	n/a	n/a.
Minke whale	N	n/a	n/a.
Sei whale	N	n/a	n/a.
Blue whale	N	n/a	n/a.
Fin whale	N	n/a	n/a.
Sperm whale	Y	HI deep-set longline (3), ATL large pelagics longline (0).	N.
Kogia spp.	Y	HI shallow-set longline (0)	N.
Cuvier's beaked whale	Y	American Samoa longline (0), ATL large pelagics longline (0).	N.
Mesoplodon spp.	Y	HI shallow-set longline (1), ATL large pelagics longline (0).	N.
Delphinis spp.	Y	ATL large pelagics longline (1.7)	Y.
Common bottlenose dolphin	Y	HI deep-set longline (9), HI shallow-set longline (7), ATL large pelagics longline-WNA offshore (1.7).	Y.
Pygmy killer whale	N	n/a	n/a.
Short-finned pilot whale	Y	Hawaii-based deep-set longline fishery (1.0 outside EEZ, 0.1 in HI EEZ), Hawaii-based shallow-set longline fishery (0.1 outside EEZ, 0 in HI EEZ), ATL large pelagics longline (119).	N.
Long-finned pilot whale	N	n/a	n/a.
Risso's dolphin	Y	CA shallow set longline fishery (0), CA deep set longline fishery (0), Hawaii-based deep-set longline fishery (0.9 outside EEZ, 0.6 in HI EEZ), Hawaii-based shallow-set longline fishery (3.6 outside EEZ, 0 in HI EEZ), ATL large pelagics longline (10).	Y.
Pantropical spotted dolphin	Y	HI deep-set longline (0.6), HI, ATL large pelagics longline (0).	N.
Fraser's dolphin	N	ATL large pelagics longline (0)	N.
Atlantic white-sided dolphin	N	ATL large pelagics longline (0)	N.
Atlantic spotted dolphin	N	ATL large pelagics longline (0)	N.
White-beaked dolphin	N	n/a	n/a.
Killer whale	Y	BSAI Greenland turbot longline (0.3)	N.
Melon-headed whale	N	n/a	n/a.
Atlantic spotted dolphin	N	ATL large pelagics longline (0)	N.
All other *Stenella* spp.	N	n/a	n/a.
Rough-toothed dolphin	N	n/a	n/a.
Harbor porpoise			
Hooded seal	N	n/a	n/a.
Gray seal	N	n/a	n/a.
Harbor seal	N	n/a	n/a.
Harp seal	N	n/a	n/a.

[1] Please refer to Table 3 for taxonomic reference.

[2] Indicates whether any member of the genus has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available.

[3] Values in parentheses represent the mean annual estimate of M/SI for that fishery in the most recent five-year timespan for which data is available (2007–11 in most cases). An interaction may be prorated if it is documented as an injury but the severity of the injury is unknown (*e.g.,* one entanglement may be estimated as 0.75 M/SI). Where there is less than one hundred percent observer coverage, documented M/SI is extrapolated to produce whole-fishery estimates. Associated CVs are not presented here; please refer to relevant SARs for more information. Some species have zero M/SI for 2007–11, but remain listed on that fishery's current list of marine mammal species/stocks injured/killed due to older interactions.

[4] Where there are no documented incidents of M/SI incidental to relevant commercial fisheries, this is not applicable.

TABLE 10—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR GILLNET GEAR FOR RELEVANT SPECIES

Species [1]	Gillnets [2]	Location/fishery [3]	Vulnerability inferred? [4]
Humpback whale	N	n/a	n/a.
North Atlantic right whale	N	n/a	n/a.
Minke whale	N	n/a	n/a.
Sei whale	N	n/a	n/a.
Blue whale	N	n/a	n/a.
Fin whale	N	n/a	n/a.
Sperm whale	N	n/a	n/a.
Kogia spp.	N	n/a	n/a.
Cuvier's beaked whale	N	n/a	n/a.
Mesoplodon spp.	N	n/a	n/a.
Delphinis spp.	Y	Northeast Sink Gillnet (41), MA Gillnet (12)	Y.

TABLE 10—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR GILLNET GEAR FOR RELEVANT SPECIES—Continued

Species [1]	Gillnets [2]	Location/fishery [3]	Vulnerability inferred? [4]
Common bottlenose dolphin	Y	Commercial mid-Atlantic gillnet fisheries post BDTRP (6.02), Southeast Atlantic inshore gillnet fishery (0.2),.	Y.
Pygmy killer whale	N	n/a	n/a.
Short-finned pilot whale	Y	CA/OR thresher shark/swordfish drift gillnet fishery (0), Northeast Sink Gillnet (1).	N.
Long-finned pilot whale	Y	Northeast Sink Gillnet (1)	N.
Risso's dolphin	Y	CA/OR thresher shark/swordfish drift gillnet fishery (7) CA/OR/WA, Mid-Atlantic Gillnet (6.8).	Y.
Pantropical spotted dolphin	N	n/a	N.
Fraser's dolphin	N	n/a	n/a.
Atlantic white-sided dolphin	Y	Northeast Sink Gillnet (33), MA Gillnet (0).	
White-beaked dolphin	N	n/a	N
Killer whale	N	n/a	N.
Melon-headed whale	N	n/a	n/a.
Atlantic spotted dolphin	N	n/a	n/a.
All other *Stenella* spp.	N	n/a	n/a.
Rough-toothed dolphin	N	n/a	n/a.
Harbor porpoise	Y	Northeast Sink Gillnet (462), Mid-Atlantic Gillnet (198), Yakutat salmon set gillnet (21.8), Kodiak Island set gillnet (35.8), Cook Inlet salmon set gillnet (0).	Y.
Hooded seal	Y	Northeast Sink Gillnet (25), Mid-Atlantic Gillnet (0)	Y.
Gray seal	Y	Northeast Sink Gillnet (1,043), Mid-Atlantic Gillnet (57).	Y.
Harbor seal	Y	Northeast Sink Gillnet (346), Mid-Atlantic Gillnet (49)	Y.
Harp seal	Y	Northeast Sink Gillnet (208), Mid-Atlantic Gillnet (63)	Y.

[1] Please refer to Table 3 for taxonomic reference.

[2] Indicates whether any member of the genus has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available.

[3] Values in parentheses represent the mean annual estimate of M/SI for that fishery in the most recent five-year timespan for which data is available (2007–11 in most cases). An interaction may be prorated if it is documented as an injury but the severity of the injury is unknown (*e.g.,* one entanglement may be estimated as 0.75 M/SI). Where there is less than one hundred percent observer coverage, documented M/SI is extrapolated to produce whole-fishery estimates. Associated CVs are not presented here; please refer to relevant SARs for more information. Some species have zero M/SI for 2007–11, but remain listed on that fishery's current list of marine mammal species/stocks injured/killed due to older interactions.

[4] Where there are no documented incidents of M/SI incidental to relevant commercial fisheries, this is not applicable.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize M/SI + Level A incidental to NEFSC survey operations. A number of factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to NEFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account by the NEFSC to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in NEFSC research gear. Similarly, we have determined that some species groups with documented M/SI are not likely to be vulnerable to capture in NEFSC gear. In these instances, we provide further explanation later in this document. Those species with no records of historical interaction with NEFSC research gear and no documented M/SI in relevant commercial fisheries, and for which the NEFSC has not requested the authorization of incidental take, are not considered further in this section. The NEFSC believes generally that any sex or age class of those species for which take authorization is requested could be captured.

Non-historical interactions—In addition to those species the NEFSC has directly interacted with research fishing gear over the 11-year period (2004–2015), the NEFSC believes it is appropriate to include estimates for future incidental takes of a number of species that have not been taken historically but inhabit the same areas and show similar types of behaviors and vulnerabilities to such gear as the ''reference'' species taken in the past. The NEFSC believes the potential for take of these other ''analogous'' species would be low and would occur rarely, if at all, based on lack of takes over the past 11 years.

We note that prior takes in the cooperative research fishery are assigned to the respective fishery; therefore the NEFSC did not consider those types of take in formulating the requested authorization. The NEFSC only estimated takes for NEFSC gear that: (1) Had a prior take in the historical record, or (2) by analogy to commercial fishing gear. Further, given the rare events of M/SI in NEFSC fishery research, the NEFSC binned gear into categories (*e.g.,* trawls) rather than partitioning take by gear, as it would result in estimated takes that far exceed the recorded take history.

Vulnerability of analogous species to different gear types is informed by the record of interactions by the analogous and reference species with commercial fisheries using gear types similar to those used in research. Furthermore, when determining the amount of take requested, we make a distinction between analogous species thought to have the same vulnerability for incidental take as the reference species and those analogous species that may have a similar vulnerability. In those cases thought to have the same vulnerability, the request is for the same number per year as the reference

species. In those cases thought to have similar vulnerability, the request is less than the reference species. For example, the NEFSC believes the vulnerability of harbor seals to be taken in gillnets is the same as for gray seals (one per year) and thus requests one harbor seal per year (total of 5 over the authorization period). Alternatively, the potential for take of Atlantic white-sided dolphins in gillnets is expected to be similar to harbor porpoise (one per year) and the reduced request relative to this reference species is one Atlantic white sided dolphin over the entire five-year authorization period.

The approach outlined here reflects: (1) Concern that some species with which we have not had historical interactions may interact with these gears, (2) acknowledgment of variation between sets, and (3) understanding that many marine mammals are not solitary so if a set results in take, the take could be greater than one animal. In these particular instances, the NEFSC estimates the take of these species to be equal to the maximum interactions per any given set of a reference species historically taken during 2004–2015.

Trawls—To estimate the requested taking of analogous species, the NEFSC identified several species in the western North Atlantic Ocean which may have similar vulnerability to research-based trawls as the short-beaked common dolphin. The maximum take of short-beaked common dolphin was two individuals in one trawl set in 2004. Therefore, on the basis of similar vulnerability, the NEFSC estimates two potential takes over the five year authorization period for each of the following species in trawls: Risso's dolphin, common bottlenose dolphin (offshore and both northern and southern coastal migratory stocks), Atlantic-white-sided dolphin, white-beaked dolphin, Atlantic spotted dolphin, and harbor porpoise. For these species, we propose to authorize a total taking by M/SI + Level A of two individuals over the five-year timespan (see Table 11).

Other dolphin species may have similar vulnerabilities as those listed above but because of the timing and location of NEFSC research activities, the NEFSC concluded that the likelihood for take of these species was low (see Tables 8, 9, and 10). Those species include: Pantropical spotted dolphin, striped dolphin, Fraser's dolphin, rough-toothed dolphin, Clymene dolphin, and spinner dolphin.

Two pinniped species may be taken in commercial fisheries analogous to NEFSC research trawl activities. In general, the NEFSC deems these species as less susceptible to incidental take in NEFSC trawl activities due to the seasonal timing and low frequency of this research as well as the higher distribution of the pinniped species near shore when compared to the more offshore distribution of NEFSC trawl activities. Therefore, NEFSC requests one potential take each of gray and harbor seals in trawls over the LOA authorization period. For these pinniped species, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 11).

Gillnets—To estimate the requested take of analogous species for gillnets, the NEFSC identified several species in the western North Atlantic Ocean which may have similar vulnerability to research-based gillnet surveys as the short-beaked common dolphin—due to similar behaviors and distributions in the survey areas.

Gillnet surveys typically occur nearshore in bays and estuaries. One gray seal and one harbor porpoise were caught during a Northeast Fisheries Observer Program training gillnet survey. The NEFSC believes that harbor seals have the same vulnerability to be taken in gillnets as gray seals and therefore estimates five takes of harbor seals in gillnets over the five-year authorization period. For this species, we propose to authorize a total taking by M/SI + Level A of five individuals over the five-year timespan (see Table 11).

Likewise, the NEFSC believes that Atlantic white-sided dolphins and short-beaked common dolphins have a similar vulnerability to be taken in gillnets as harbor porpoise and bottlenose dolphins (Waring *et al.,* 2014) and estimates one take each of Atlantic white-sided dolphin and short-beaked common dolphin in gillnet gear over the five-year authorization period. For this species, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 11).

In 2008, the COASTSPAN gillnet survey caught and killed one common bottlenose dolphin while a cooperating institution was conducting the survey in South Carolina. This was the only occurrence of incidental take in these surveys. The NEFSC is not requesting any bottlenose dolphin takes from the Northern South Carolina Estuarine System stock. Further, because of limited survey effort in estuarine waters, the NEFSC considers there to be a remote chance of incidentally taking a bottlenose dolphin from the estuarine stocks. Thus, the NEFSC is not requesting take for the estuarine stocks of bottlenose dolphins for the COASTPAN longline and gillnet surveys. However, in the future, if there is a bottlenose dolphin take from the estuarine stocks as confirmed by genetic sampling, the NEFSC will reconsider its take request in consultation and coordination with the NMFS Office of Protected Resources and the Atlantic Bottlenose Dolphin Take Reduction Team.

Fyke nets—For fyke nets, the NEFSC believes that gray seals have a similar vulnerability for incidental take as harbor seals which interacted once in a single fyke net set during the past 11 years. For the period of this authorization, the NEFSC estimates one take by fyke net for gray seals over the five-year authorization period. Thus, for gray seals, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 11).

Longlines—While the NEFSC has not historically interacted with large whales or other cetaceans in its longline gear, it is well documented that some of these species are taken in commercial longline fisheries. The 2015 List of Fisheries classifies commercial fisheries based on prior interactions with marine mammals. Although the NEFSC used this information to help make an informed decision on the probability of specific cetacean and large whale interactions with longline gear, many other factors were also taken into account (*e.g.,* relative survey effort, survey location, similarity in gear type, animal behavior, prior history of NEFSC interactions with longline gear, *etc.*). Therefore, there are several species that have been shown to interact with commercial longline fisheries but for which the NEFSC is not requesting take. For example, the NEFSC is not requesting take of large whales, long-finned pilot whales, and short-finned pilot whales in longline gear. Although these species could become entangled in longline gear, the probability of interaction with NEFSC longline gear is extremely low considering a low level of survey effort relative to that of commercial fisheries, the short length of the mainline, and low numbers of hooks used. Based on the amount of fish caught by commercial fisheries versus NEFSC fisheries research, the ''footprint'' of research effort compared to commercial fisheries is very small. The NEFSC considered previously caught species (as outlined in the 2015 List of Fisheries, see Tables 8, 9, and 10) in analogous commercial fisheries to have a higher probability of take; however, all were not included for potential take by the NEFSC. Additionally, marine mammals have

never been caught or entangled in NEFSC longline gear; if interactions occur marine mammals depredate caught fish from the gear but leave the hooks attached and unaltered. They have never been hooked nor had hooks taken off gear during depredation. However, such gear could be considered analogous to potential commercial longline surveys that may be conducted elsewhere (*e.g.,* Garrison, 2007; Roche *et al.* 2007; Straley *et al.,* 2014). Given the potential for interactions, NEFSC estimates one take over the five-year authorization period of the following cetaceans in longline gear: Risso's dolphin, common bottlenose dolphin (offshore and both northern and southern coastal migratory stocks), and short-beaked common dolphins. For these species, we propose to authorize a total taking by M/SI + Level A of one individual over the five-year timespan (see Table 11).

It is also possible that researchers may not be able to identify a captured animal to the species level with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. Therefore, the NEFSC has requested the authorization of incidental M/SI + Level A for an unidentified delphinid by trawl (1 individual), gillnet (1 individual), and longline (1 individual) gears over the course of the five-year period of the proposed authorization. Similarly, the NEFSC has requested the authorization of incidental M/SI + Level A for an unidentified pinniped by fyke net (1 individual), gillnet (1 individual), and longline (1 individual) gears.

TABLE 11—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION IN THE ATLANTIC COAST REGION, 2015–2020

Species	Est. 5-year total, trawl [1]	Est. 5-year total, gillnet [1]	Est. 5-year total, longline [1]	Est. 5-year total, fyke net [1]	Total, all gears
Minke whale	5	0	0	0	5
Risso's dolphin	2	0	1	0	3
Atlantic white-sided dolphin	2	1	0	0	3
White-beaked dolphin	2	0	0	0	2
Short-beaked common dolphin	5	1	1	0	7
Atlantic spotted dolphin	2	0	0	0	2
Common bottlenose dolphin (WNA offshore stock) [2]	2	5	1	0	8
Common bottlenose dolphin (WNA N. Migratory stock) [2]	2	5	1	0	8
Common bottlenose dolphin (WNA S. Migratory stock) [2]	2	5	1	0	8
Harbor porpoise	2	5	0	0	7
Unidentified delphinid	1	1	1	0	3
Harbor seal	1	5	0	5	11
Gray seal	1	5	0	1	7
Unidentified pinniped	0	1	1	1	3

[1] Please see preceding text for derivation of take estimates.
[2] The NEFSC is not requesting takes for the estuarine stocks of bottlenose dolphins for the COASTPAN longline and gillnet surveys.

Estimated Take Due to Acoustic Harassment

As described previously (''Potential Effects of the Specified Activity on Marine Mammals''), we believe that NEFSC's use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the NEFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under ''Description of Active Acoustic Sound Sources,'' their expected patterns of use in the NEFSC operational areas in the Atlantic coast region, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates should be seen as a likely substantial overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems. Additional details on the approach used and the assumptions made that result in conservative estimates are described later.

The assessment paradigm for active acoustic sources used in NEFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems, the current threshold is 160 dB re 1 μPa (rms) for Level B harassment. Estimating the number of exposures at the 160-dB received level requires several determinations, each of which is described sequentially here:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ''swath width'') of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the

upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. We describe the methods for estimating each of these calculations in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates for the proposed research surveys in the Atlantic coast region.

Sound source characteristics—The NEFSC conducted an initial characterization of the general source parameters for the primary active acoustic sources during survey operations, thus, enabling a full assessment of all sound sources used by the NEFSC and delineation of Category 1 and Category 2 sources (see Table 2) the latter of which are carried forward for additional analyses presented here. This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.,* lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.,* largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey.

Among the eight Category 2 sources identified in Table 2, the NEFSC identified six predominant sources (Table 12) as having the largest potential impact zones during operations, based on their relatively lower output frequency, higher output power, and their operational pattern of use.

TABLE 12—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: sea surface to 200 m depth (km^2)	Effective exposure area: sea surface to depth at which 160-dB threshold is reached (km^2)
Simrad EK60 (surrogate for ES60) narrow beam echosounder	0.0142	0.1411
Simrad ME70 multibeam echosounder	0.0201	0.0201
Teledyne RD Instruments ADCP, Ocean Surveyor	0.0144	0.0303
Raymarine SS260 transducer for DSM300 (surrogate for FCV–292)	0.0004	0.0004
Simrad EQ50	0.0142	0.1411
NetMind	0.0201	0.0201

The NEFSC estimated the effective cross-sectional areas of exposure for each of the six predominant sources using a commercial software package (MATLAB) and key input parameters including source-specific operational characteristics (*i.e.,* frequency, beamwidth, source level, tilt angle, and horizontal and vertical resolution; see Table 2) and environmental characteristics (*i.e.,* depth for attenuation coefficient, temperature, salinity, pH, and latitude). Where relevant, the NEFSC performed calculations for different notional operational scenarios, and the largest cross-sectional area used in estimating take. For example, the EK60 cross-sectional area was calculated for (a) a simple cone at 3 dB points; (b) a rectangle derived from strip width times depth; and (c) integration of the nominal beam pattern, which assumes side lobes of ensonification (and which is displayed in Figure 6–2 of the NEFSC's PEA).

Calculating effective line-kilometers—In determining the effective line-kilometers for each of these predominant sources, the operational patterns of use relative to one another were further applied to determine which source was the predominant one operating at any point in time for each survey. When multiple sound sources are used simultaneously, the one with the largest potential impact zone in each relevant depth strata is considered for use in estimating exposures. For example, when species (*e.g.,* sperm whales) regularly dive deeper than 200 m, the largest potential impact zone was calculated for both depth strata and in some cases resulted in a different source being predominant in one depth stratum or the other. This enabled a more comprehensive way of accounting for maximum exposures for animals diving in a complex sound field resulting from simultaneous sources with different spatial profiles. This overall process effectively resulted in three sound sources (*i.e.,* the EK60, ME70, and DSM300) comprising the total effective line-kilometers, their relative proportions depending on the nature of each survey in each region.

Based on the operating parameters for each source type, the NEFSC determined an estimated volume of water ensonified at or above the 160 dB rms threshold. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. This was calculated for each depth stratum (0–200 m and > 200m), where appropriate (*i.e.* in the Atlantic coast region, where depth is generally less than 200 m, only the exposure area for the 0–200 m depth strata was calculated). In some cases, this resulted in different sources being predominant in each depth stratum for all line km when multiple sources were in operation; this was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). For each ecosystem area, the total number of line km that would be surveyed was determined, as was the relative percentage of surveyed linear km associated with each source type. The total line-kilometers for each vessel, the effective percentages associated with each of the resulting three predominant source types (EK60, ME70, and DSM300), and the effective total line-kilometers of operation for each source type follow in Tables 13, 14, and 15.

TABLE 13—ANNUAL LINEAR SURVEY km FOR EACH VESSEL TYPE AND ITS PREDOMINANT SOURCES WITHIN THE 0–200 m DEPTH STRATUM FOR THE ATLANTIC COAST REGION

Vessel	Survey(s)	Line km/ vessel	Source	Overall % source usage	% Time source dominant (0–200 m)	Line km/ dominant source (0–200 m)
R/V *H.B. Bigelow*	BTS, Spring ECOMon	27303	ES60	100	5	1365.15
			ME70	100		
			ADCP	95	95	25937.85
			Doppler Spd log	95		
			Doppler Spd log	25		
	Marine mammal Pop-up retrieval.	913 <200 m	EK60	2	2	18.26
	Marine mammal abundance	1700	EK60	50	50	850
R/V *G. Michelle*	Mass DMF Inshore Spring & Fall Bottom Trawl Survey.	8000	DSM300	100	100	8000
R/V *Pisces*	Gulf of Maine Northern Shrimp Survey.	6000	DSM300	100	100	6000
	Pelagics	4773	EK60	100	5	238.65
			ES60	100		
			ME70	95	95	4534.35
			ADCP	95		
			Doppler Spd log	25		
	Atlantic Herring	8300	EK60	100	25	2075
			ME70	75	75	6225
			ADCP	100		
R/V *G. Gunter*	LMRCSC	2880	EK60	100	100	2880
			Simrad EQ50	100		
	Pelagics	9500	EK60	100	100	9500
			Simrad EQ50	100		

TABLE 14—ANNUAL LINEAR SURVEY km FOR EACH VESSEL TYPE AND ITS PREDOMINANT SOURCES WITHIN THE TWO DEPTH STRATA FOR THE OFFSHORE (>200 m WATER DEPTH) HABITAT

Vessel	Survey(s)	Line km/ vessel	Source	Overall % source usage	% Time source dominant (0–200 m)	% Time source dominant (>200 m)	Line km/ dominant source (0–200 m)	Line km/ dominant source (>200 m)
R/V *H.B. Bigelow*	Deepwater corals/ habitat.	4808	EK60	100	5	100	240.4	4808
			ES60	100				
			ME70	95	95	0	4567.6	
			ADCP	95				
			Doppler Spd log.	25				
	Marine Mammal Abundance.	3359	EK60	50	50	50	1679.5	1679.5
R/V *Pisces*	Deepwater Biodiversity.	2328	EK60	100	75	100	1746	2328
			ES60	5				
			ME70	25	25	0	582	
			ADCP	100				
			Doppler Spd log.	100				

TABLE 15—EFFECTIVE TOTAL ANNUAL SURVEY KILOMETERS FOR WHICH EACH SOURCE TYPE IS THE PREDOMINANT ACOUSTIC SOURCE WITHIN TWO DEPTH STRATA

Source	Summed line km/ source (0–200 m)	Summed line km/ source (>200 m)	Summed dominant source % of total line km (0–200 m)	Summed dominant source % of total line km (>200 m)
Atlantic Coast Region				
EK60	16927	NA	25	NA
ME70	36697	NA	54	NA
DSM300	14000	NA	21	NA
Offshore Region				
EK60	3666	8816	42	100
ME70	5150	0	58	0

Calculating volume of water ensonified—The cross-sectional area of water ensonified at or above the 160 dB rms threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. The NEFSC used a spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source (*i.e.,* 60 dB of attenuation over 1,000 m), a reasonable approximation over the relatively short ranges involved, and accounted for the frequency-dependent absorption coefficient and beam pattern of these sound sources, which is generally highly directional. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata (0–200 m and surface to range at which the on-axis received level reaches 160 dB rms). A simple visualization of a two-dimensional slice of modeled sound propagation is shown in Figure 6–2 of NEFSC's application to illustrate the predicted area ensonified to the 160-dB threshold by an EK60 operated at 18 kHz. The NEFSC differentially applied these results based on the typical vertical stratification of marine mammals.

Following the determination of effective sound exposure area for transmissions considered in two dimensions, the next step was to determine the effective volume of water ensonified at or above 160 dB rms for the entirety of each survey in each region. For each of the three predominant sound sources, the volume of water ensonified is estimated as the athwartship cross-sectional area (in square kilometers) of sound at or above 160 dB rms (as illustrated in Figure 6–2 of the NEFSC's application) multiplied by the total distance traveled by the ship.

Where different sources operating simultaneously would be predominant in each different depth strata (*e.g.,* ME70 and EK60 operating simultaneously may be predominant in the shallow stratum and deep stratum, respectively), the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

Marine mammal densities—One of the primary limitations to traditional estimates of behavioral harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound (*e.g.,* Navy, 2013). While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

First, typical two-dimensional marine mammal density estimates (animals/km^2) were obtained from various sources for each ecosystem area. These were estimated from marine mammal Stock Assessment Reports for the western North Atlantic (Waring *et al.,* 2011, 2012, 2013, 2014). However, there are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year. The time of year when data were collected and from which densities were estimated may not always overlap with the timing of NEFSC fisheries surveys (detailed previously in ''Detailed Description of Activities'').

(2) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area and seasonal movement patterns are not taken into account.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and 0 to greater than 200 m) based on gross differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.,* Reynolds and Rommel, 1999; Perrin *et al.,* 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.,* greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to sound is therefore limited by this depth boundary. In contrast, species in the deeper-diving stratum were assumed to regularly dive deeper than 200 m and spend significant time at these greater depths. Their volumetric density and thus potential exposure to sound at or above the 160 dB rms threshold is extended from the surface to the depth at which this received level condition occurs (*e.g.,* the Atlantic coast region was generally considered to be comprised of water no deeper than 200 m).

The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species the volumetric density is the area density divided by 0.2 km (*i.e.,* 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.,* 500 m), or the depth of the region of interest (*e.g.,* in the LME area density for deep diving species was divided by 0.2km to reflect the depth of the region). Table 17 shows the two-dimensional and resulting three-dimensional (volumetric) densities for each species in the Atlantic coast region and adjacent offshore waters.

TABLE 16—VOLUMETRIC DENSITIES FOR EACH SPECIES IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS

Species	Typical depth strata		Atlantic coast region density (#/km^2)	Offshore area density (#/km^2)	Atlantic coast region volumetric density (#/km^3)	Offshore area volumetric density (#/km^3)
	0–200 m	>200 m (deep divers)				
Cetaceans						
North Atlantic right whale	X	.....	0.0018	0	0.00900	0.00000
Humpback whale	X	.....	0.0009	0.0006	0.00450	0.00300
Fin whale	X	.....	0.0036	0.0007	0.01800	0.00350
Sei whale	X	.....	0.0027	0.00004	0.01350	0.00020
Minke whale	X	.....	0.0066	0	0.03300	0.00000
Blue whale	X	.....	0	0.0026	0.00000	0.01300
Sperm whale	.....	X	0.00001	0.0152	0.00005	0.03040
Dwarf sperm whale	.....	X	0.00002	0.002	0.00010	0.00400
Pygmy sperm whale	.....	X	0.00002	0.002	0.00010	0.00400
Killer Whale	X	.....	.....	.....	.....	.....
Pygmy killer whale	X	.....	.....	.....	.....	.....
Northern bottle-nose whale	.....	X	0	0.0017	0.00000	0.00340
Cuvier's beaked whale	.....	X	0.0021	0.0156	0.01050	0.03120
Mesoplodon beaked whales	.....	X	0.0021	0.0156	0.01050	0.03120
Melon-headed whale	X	.....	.....	.....	0.00000	0.00000
Risso's dolphin	X	.....	0.0022	0.0844	0.01100	0.42200
Long-finned pilot whale	.....	X	0.0345	0.0256	0.17250	0.05120
Short-finned pilot whale	.....	X	0.0345	0.0256	0.17250	0.05120
Atlantic white-sided dolphin	X	.....	0.0244	0	0.12200	0.00000
White-beaked dolphin	X	.....	0.0081	0	0.04050	0.00000
Short-beaked common dolphin	X	.....	0.2115	0.1875	1.05750	0.93750
Atlantic spotted dolphin	X	.....	0	0.0208	0.00000	0.10400
Pantropical spotted dolphin	X	.....	.....	.....	.....	.....
Striped dolphin	X	.....	0	0.3028	0.00000	1.51400
Fraser's dolphin	X	.....	.....	.....	.....	.....
Rough toothed dolphin	X	.....	0	0.0016	0.00000	0.00800
Clymene dolphin	X	.....	.....	.....	.....	.....
Spinner dolphin	.....	X	.....	.....	.....	.....
Common bottle-nose dophin (offshore)	X	.....	0.0060	0.0526	0.03000	0.26300
Common bottle-nose dolphin (coastal)	X	.....	0.1033	0	0.51650	0.00000
Harbor Porpoise	X	.....	0.0193	0	0.09650	0.00000
Pinnipeds						
Harbor Seal	X	.....	0.2844	.....	1.42200	0.00000
Gray Seal	X	.....	.....	.....	.....	.....
Harp Seal	X	.....	.....	.....	.....	.....
Hooded Seal	X	.....	.....	.....	.....	.....

Using area of ensonification and volumetric density to estimate exposures—Estimates of potential incidents of Level B harassment (*i.e.,* potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated for the Atlantic coast region and adjacent offshore areas by using: (1) The combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output (Tables 2 and 12); (2) their relative annual usage patterns for each depth stratum (Tables 13, 14, and 15); (3) a source-specific determination made of the area of water associated with received sounds at either the extent of a depth boundary or the 160 dB rms received sound level; and (4) determination of a biologically-relevant volumetric density of marine mammal species in each area (Table 16).

Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each portion of the total line-kilometers for which it is used and the volumetric density of animals for each species. We will present the annual take estimates later in this document.

For each species and sound source, the cross sectional area for the relevant depth strata (Tables 13, 14, and 15) was multiplied by the effective line km for each respective depth strata for the relevant survey area and the volumetric density to estimate Level B harassment.

To illustrate the process, we focus on the EK60 and the North Atlantic right whale.

(1) EK60 ensonified volume; 0–200 m: 0.0142 km^2 * 16,927 km = 240.36 km^3

(2) Estimated exposures to sound ≥ 160 dB rms; North Atlantic right whale; EK60: (0.009 North Atlantic right whales/km^3 * 240.36 km^3 = 2.1 [rounded to 2]) = 2 estimated North Atlantic right whale exposures to SPLs ≥ 160 dB rms resulting from use of the EK60 in the 0–200 m depth stratum.

TABLE 17—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS

Species	Volumetric density (#/km^3)	Estimated Level B harassment (#s of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum	Total
		EK60	ME70	DSM300	EK60	
Atlantic Coast Region Cetaceans						
North Atlantic right whale	0.009	2	7	2	NA	11
Humpback whale	0.0045	1	3	1	NA	5
Fin whale	0.018	4	13	4	NA	21
Sei whale	0.0135	3	10	3	NA	16
Minke whale	0.033	8	24	7	NA	39
Blue whale	0	0	0	0	NA	[1] 10
Sperm whale	0.00005	0	0	0	NA	[1] 10
Dwarf sperm whale	0.0001	0	0	0	NA	[1] 10
Pygmy sperm whale	0.0001	0	0	0	NA	[1] 10
Killer Whale	0	0	0	0	NA	[1] 10
Pygmy killer whale	0	0	0	0	NA	[1] 10
Northern bottlenose whale	0	0	0	0	NA	[1] 10
Cuvier's beaked whale	0.0105	3	8	2	NA	13
Mesoplodon beaked whales	0.0105	3	8	2	NA	13
Melon-headed whale	0	0	0	0	NA	[1] 10
Risso's dolphin	0.011	3	8	2	NA	13
Long-finned pilot whale	0.1725	41	127	35	NA	203
Short-finned pilot whale	0.1725	41	127	35	NA	203
Atlantic white-sided dolphin	0.122	29	90	25	NA	144
White-beaked dolphin	0.0405	10	30	8	NA	48
Short-beaked common dolphin	1.0575	254	780	213	NA	1247
Atlantic spotted dolphin	0	0	0	0	NA	[1] 10
Pantropical spotted dolphin	0	0	0	0	NA	[1] 10
Striped dolphin	0	0	0	0	NA	[1] 10
Fraser's dolphin	0	0	0	0	NA	[1] 10
Rough toothed dolphin	0	0	0	0	NA	[1] 10
Clymene dolphin	0	0	0	0	NA	[1] 10
Spinner dolphin	0	0	0	0	NA	[1] 10
Common bottlenose dolphin (offshore)	0.0300	7	22	6	NA	35
Common bottlenose dolphin (coastal)	0.5165	124	381	104	NA	609
Harbor Porpoise	0.0965	23	71	19	NA	113
Atlantic Coast Region Pinnipeds						
Harbor Seal	1.422	342	1049	287	NA	1678
Gray Seal	0.00000	0	0	0	NA	[1] 10
Harp Seal	0.00000	0	0	0	NA	[1] 10
Hooded Seal	0.00000	0	0	0	NA	[1] 10
Offshore Area Cetaceans						
North Atlantic right whale	0	0	0	0	0	[1] 10
Humpback whale	0.003	0	0	0	0	[1] 10
Fin whale	0.004	0	0	0	0	[1] 10
Sei whale	0.0002	0	0	0	0	[1] 10
Minke whale	0	0	0	0	0	[1] 10
Blue whale	0.013	1	1	0	0	2
Sperm whale	0.0304	2	3	0	14	19
Dwarf sperm whale	0.004	0	0	0	2	2
Pygmy sperm whale	0.004	0	0	0	2	2
Killer Whale	0	0	0	0	0	[1] 10
Pygmy killer whale	0	0	0	0	0	[1] 10
Northern bottlenose whale	0.0034	0	0	0	2	2
Cuvier's beaked whale	0.0312	2	3	.....	15	20
Mesoplodon beaked whales	0.0312	2	3	0	15	20
Melon-headed whale	0	0	0	0	0	[1] 10
Risso's dolphin	0.422	22	44	0	0	66
Long-finned pilot whale	0.0512	3	5	0	24	32
Short-finned pilot whale	0.0512	3	5	0	24	32
Atlantic white-sided dolphin	0	0	0	0	0	[1] 10
White-beaked dolphin	0	0	0	0	0	[1] 10
Short-beaked common dolphin	0.9375	49	97	0	0	146
Atlantic spotted dolphin	0.104	5	11	0	0	16
Pantropical spotted dolphin	0	0	0	0	0	[1] 10

TABLE 17—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE ATLANTIC COAST REGION AND ADJACENT OFFSHORE WATERS—Continued

Species	Volumetric density (#/km^3)	Estimated Level B harassment (#s of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum	Total
		EK60	ME70	DSM300	EK60	
Striped dolphin	1.514	79	157	0	0	236
Fraser's dolphin	0	0	0	0	0	[1] 10
Rough toothed dolphin	0.008	0	1	0	0	1
Clymene dolphin	0	0	0	0	0	[1] 10
Spinner dolphin	0	0	0	0	0	[1] 10
Common bottlenose dolphin (offshore)	0.2630	14	27	0	0	41

[1] For all species with unknown or very low volumetric density, *i.e.,* ≤0.004 animals per km3, or for species unlikely to be impacted by the predominant acoustic sources outlined above, the NEFSC requested a precautionary Level B Harassment take of 10 individuals. The number chosen is indicative of the very low probability of sighting or interaction with these species during most research cruises with the active acoustic instruments used in NEFSC research.

Estimated Take Due to Physical Disturbance

Estimated take due to physical disturbance could potentially occur in the Penobscot River Estuary as a result of the unintentional approach of NEFSC vessels to pinnipeds hauled out on ledges. This would result in no greater than Level B harassment.

The NEFSC uses four gear types (fyke nets, beach seine, rotary screw traps, and Mamou shrimp trawl) to monitor fish communities in the Penobscot River Estuary. The NEFSC conducts the annual surveys over specific sampling periods which could use any gear type: Mamou trawling is conducted year-round; fyke net and beach seine surveys are conducted April–November, and rotary screw trap surveys from April–June.

We anticipate that trawl, fyke net, and beach seine surveys may disturb harbor seals and gray seals hauled out on tidal ledges. The NEFSC conducts these surveys in upper Penobscot Bay above Fort Point Ledge where there is only one minor seal ledge (Odum Ledge) used by approximately 50 harbor seals (*i.e.,* based on a June 2001 survey). Although one cannot assume that the number of seals using this region is stable over the April–November survey period; it is likely lower in spring and autumn.

There were no observations of gray seals in the 2001 survey, but recent anecdotal information suggests that a few gray seals may share the haulout site. These fisheries research activities do not entail intentional approaches to seals on ledges (*i.e.,* boats avoid close approach to tidal ledges and no gear is deployed near the tidal ledges), only behavioral disturbance incidental to small boat activities is anticipated. It is likely that some pinnipeds on the ledges would move or flush from the haul-out into the water in response to the presence or sound of NEFSC survey vessels. Behavioral responses may be considered according to the scale shown in Table 18. We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 18—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight	All retreats (flushes) to the water or another group of seals.

The NEFSC estimated potential incidents of Level B harassment due to physical disturbance (Table 19) using the following assumptions: (1) All hauled out seals may be disturbed by passing research skiffs, although researchers have estimated that only about 10 percent (5 animals in a group of 50) have been visibly disturbed in the past; and (2) approximately 50 harbor seals and 20 gray seals may be disturbed by the passage of researchers for each survey effort (100 fyke net sets, 100 beach seine sets, and 200 Mamou shrimp trawls per year).

The resulting estimate (Table 20) is that 50 harbor seals and 20 gray seals may be disturbed (Level B harassment) by the physical presence of researchers in skiffs annually. The estimated total number of instances of harassment is approximately 20,000 for harbor seals and 8,000 for gray seals. However, this level of periodic and temporary disturbance is unlikely to affect the use of the haulout by either species.

TABLE 19—ESTIMATED ANNUAL LEVEL B HARASSMENT TAKE OF PINNIPEDS ASSOCIATED WITH SURVEYS IN THE LOWER ESTUARY OF THE PENOBSCOT RIVER

Species	Estimated seals on ledge haulout	Survey gear	Number of sets	Survey season	Estimated instances of harassment
Harbor seal	50	Fyke net	100	April–November	5,000
Gray seal	20				2,000
Harbor seal	50	Beach seine	100	April–November	5,000
Gray seal	20				2,000
Harbor seal	50	Mamou shrimp trawl	200	Year-round	10,000
Gray seal	20				4,000

Summary of Estimated Incidental Take

Here we provide summary tables detailing the total proposed incidental take authorization on an annual basis for the NEFSC in the Atlantic coast region, as well as other information relevant to the negligible impact analyses.

TABLE 20—SUMMARY INFORMATION RELATED TO PROPOSED ANNUAL TAKE AUTHORIZATION IN THE ATLANTIC COAST REGION, 2015–2020

Species [1]	Proposed total annual Level B harassment authorization	Percent of estimated population	Proposed total M/SI + Level A authorization 2015–2020	Estimated maximum annual M/SI + Level A [2]	PBR [3]	% PBR [4]	Stock trend [5]
North Atlantic Right whale	21	4.52	0	0	n/a		↑
Humpback whale	15	1.82	0	0	n/a		↑
Minke whale	49	0.02	5	1	162	0.62	?
Sei whale	26	7.28	0	0	n/a		?
Fin whale	31	1.92	0	0	n/a		?
Blue whale	12	2.73	0	0	n/a		?
Sperm whale	29	1.27	0	0	n/a		?
Kogia spp.	12	0.32	0	0	n/a		?
Cuvier's beaked whale	33	0.51	0	0	n/a		?
Mesoplodont beaked whales	33	0.47	0	0	n/a		
Bottlenose dolphin (WNA Offshore) [6].	76	0.10	[6] 11	2.2	561	0.39	?
Bottlenose dolphin (WNA, Northern Migratory Coastal) [6].	609	5.27	[6] 11	2.2	86	2.56	?
Bottlenose dolphin (WNA, Southern Migratory Coastal) [6].	609	6.64	[6] 11	2.2	63	3.49	?
Pantropical spotted dolphin	20	0.60	0	0	n/a		?
Atlantic spotted dolphin	26	0.06	3	0.6	316	0.19	?
Spinner dolphin	20	undet.	0	0	n/a		?
Striped dolphin	246	0.45	0	0	n/a		?
Short-beaked common dolphin	1,393	0.80	10	2	170	1.18	?
White-beaked dolphin	58	2.90	3	0.6	10	6.00	?
Atlantic white-sided-dolphin	154	0.32	5	1	304	0.33	?
Risso's dolphin	79	0.43	5	1	126	0.79	?
Fraser's dolphin	20	undet.	0	0	n/a		?
Clymene dolphin	20	0.33	0	0	n/a		?
Melon-headed whale	20	undet.	0	0	n/a		?
Pygmy killer whale	20	undet.	0	0	n/a		?
Long-finned pilot whale	235	0.89	0	0	n/a		?
Short-finned pilot whale	235	1.09	0	0	n/a		?
Harbor porpoise	113	0.14	7	1.4	706	0.20	?
Gray seal	10; 20 [7]	2.42	10	1.6	1,469	0.14	↑
Harp seal	10	0.0001	0	0	n/a		→↑
Harbor seal	1,768; 50 [7].	0.001	14	2.8	1,662	0.17	?
Unidentified delphinid				n/a	n/a		n/a
Unidentified pinniped				n/a	n/a		n/a

Please see preceding text for details.

[1] For species with multiple stocks in the Atlantic coast regions or for species groups (*Kogia spp.* and Mesoplodont beaked whales), indicated level of take could occur to individuals from any stock or species (not including coastal and estuarine stocks of bottlenose dolphins).

[2] This column represents the total number of incidents of M/SI + Level A that could potentially accrue to the specified species or stock and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped or delphinid that may be captured in longline or gillnet gear, one to the total for each delphinid that may be captured in trawl gear, and one pinniped that may be captured in fyke net gear. This represents the potential that the take of an unidentified pinniped or delphinid could accrue to any given stock captured in that gear. The proposed take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

[3] See Table 3 and following discussion for more detail regarding PBR.

[4] Estimated maximum annual M/SI + Level A expressed as a percentage of PBR.

[5] See relevant SARs for more information regarding stock status and trends. Interannual increases may not be interpreted as evidence of a trend.

[6] For these stocks of bottlenose dolphins, the estimated annual maximum numbers of M/SI + Level A reflect the stock-specific trawl estimate (2), plus five for gillnet take, plus one for longline take, plus three for the potential take of one unidentified delphinid by trawl, gillnet, and longline.

[7] The first number represents estimated annual Level B take by acoustic sources. The second number represents estimated annual Level B take by the physical disturbance during surveys in Penobscot Bay.

Analyses and Preliminary Determinations

Here we provide negligible impact analyses and small numbers analyses for the Atlantic coast region for which we propose rulemaking. Unless otherwise specified, the discussion below is intended to apply to all of the species for which take is authorized, *i.e.,* those discussed previously and indicated in Table 20 given that the anticipated effects of these activities are expected to be similar in nature, and there is no information about the size, status, or structure of any species or stock that would lead to a different analysis. In some cases we add species-specific factors.

Negligible Impact Analyses

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat. We also evaluate the number, intensity, and context of estimated takes by evaluating this information relative to population status. The impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate).

In 1988, Congress amended the MMPA, with provisions for the incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to set allowable take levels incidental to commercial fishing operations led NMFS to suggest a new and simpler conceptual means for assuring that incidental take does not cause any marine mammal species or stock to be reduced or to be maintained below the lower limit of its Optimum Sustainable Population (OSP) level. That concept (PBR) was incorporated in the 1994 amendments to the MMPA, wherein Congress enacted MMPA sections 117 and 118, establishing a new regime governing the incidental taking of marine mammals in commercial fishing operations and stock assessments.

PBR, which is defined by the MMPA (16 U.S.C. 1362(20)) as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population,'' is one tool that can be used to help evaluate the effects of M/SI on a marine mammal stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.'' A primary goal of the MMPA is to ensure that each stock of marine mammal either does not have a level of human-caused M/SI that is likely to cause the stock to be reduced below its OSP level or, if the stock is depleted (*i.e.,* below its OSP level), does not have a level of human-caused mortality and serious injury that is likely to delay restoration of the stock to OSP level by more than ten percent in comparison with recovery time in the absence of human-caused M/SI.

PBR appears within the MMPA only in section 117 (relating to periodic stock assessments) and in portions of section 118 describing requirements for take reduction plans for reducing marine mammal bycatch in commercial fisheries. PBR was not designed as an absolute threshold limiting human activities, but as a means to evaluate the relative impacts of those activities on marine mammal stocks. Specifically, assessing M/SI relative to a stock's PBR may signal to NMFS the need to establish take reduction teams in commercial fisheries and may assist NMFS and existing take reduction teams in the identification of measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below a stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather may prioritize working with a take reduction team to further mitigate the effects of fishery activities via additional bycatch reduction measures.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA, including those within section 101(a)(5)(E) related to the taking of ESA-listed marine mammals incidental to commercial fisheries (64 FR 28800; May 27, 1999). The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA. Although NMFS has not historically applied PBR outside the context of sections 117 and 118, NMFS recognizes that as a quantitative tool, PBR may be useful in certain instances for evaluating the impacts of other human-caused activities on marine mammal stocks. In this analysis, we consider incidental M/

SI relative to PBR for each affected stock, in addition to considering the interaction of those removals with incidental taking of that stock by harassment, within our evaluation of the likely impacts of the proposed activities on marine mammal stocks and in determining whether those impacts are likely to be negligible. Our use of PBR in this case does not make up the entirety of our impact assessment, but rather is utilized as a known, quantitative metric for evaluating whether the proposed activities are likely to have a population-level effect on the affected marine mammal stocks. For the purposes of analyzing this specified activity, NMFS acknowledges that some of the fisheries research activities use similar gear and may have similar effects, but on a smaller scale, as marine mammal take by commercial fisheries.

Species/Group Specific Analysis—To avoid repetition, the majority of our preliminary applies to all the species listed in Table 20, given that the anticipated effects of the NEFSC research activities are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, we describe them within the section or within a separate sub-section. See the Brief Background on Sound section earlier in this proposed rule for a description of marine mammal functional hearing groups as originally designated by Southall *et al.* (2007).

Acoustic Effects—Please refer to Table 20 for information relating to this analysis. As described in greater depth previously (see ''Acoustic Effects''), we do not believe that the NEFSC's use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. In addition, for the majority of species, the proposed annual take by Level B harassment is very low in relation to the population abundance estimate (less than 7.5 percent) for each stock.

We have produced what we believe to be conservative estimates of potential incidents of Level B harassment. The procedure for producing these estimates, described in detail in ''Estimated Take Due to Acoustic Harassment,'' represents NMFS' best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where the NEFSC operates. The sources considered here have moderate to high output frequencies (10 to 180 kHz), generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization.

In particular, low-frequency hearing specialists (*i.e.,* mysticetes) and certain pinnipeds (*i.e.,* otariids) are less likely to perceive or, given perception, to react to these signals than the quantitative estimates indicate. These groups have reduced functional hearing at the higher frequencies produced by active acoustic sources considered here (*e.g.,* primary operating frequencies of 40–180 kHz) and, based purely on their auditory capabilities, the potential impacts are likely much less (or non-existent) than we have calculated as these relevant factors are not taken into account.

However, for purposes of this analysis, we assume that the take levels proposed for authorization will occur. As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals (*i.e.,* odontocete cetaceans), but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (*e.g.,* Southall *et al.,* 2007). There is the potential for behavioral reactions of greater severity, including displacement, but because of the directional nature of the sources considered here and because the source is itself moving, these outcomes are unlikely and would be of short duration if they did occur. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that NEFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely.

Take by M/SI + Level A—We now consider the level of taking by M/SI + Level A proposed for authorization. First, it is likely that required injury determinations will show some undetermined number of gear interactions to result in Level A harassment rather than serious injury; therefore, our authorized take numbers are overestimates with regard solely to M/SI. In addition, we note that these proposed take levels are likely precautionary overall when considering that: (1) Estimates for historically taken species were developed assuming that the annual average number of takes from 2004–2015, would occur in each year from 2015–20; and that (2) the majority of species for which take authorization is proposed have never been taken in NEFSC surveys.

However, assuming that all of the takes proposed for authorization actually occur, we assess these quantitatively by comparing to the calculated PBR for each stock. Estimated M/SI for all stocks is significantly less than PBR and the annual average take by M/SI + Level A for these stocks well below the PBR (less than four percent for each stock, with the exception of white beaked dolphins at six percent).

Large whales (North Atlantic right, blue, fin, sei, humpback, and sperm whales)—Due to their very low numbers within the NEFSC research area and a tendency to occur primarily in waters outside of the NEFSC research area, blue, sperm, and sei whales rarely coincide with NEFSC fisheries research vessels. Thus, we anticipate that any potential gear interactions are unlikely. There have been no entanglements or takes of blue, sperm, or sei whales or any ESA-listed marine mammals in NEFSC fisheries research. Thus, there are no requested take by M/SI + Level A of these species during the next five years. Given the mitigation measures in place and the lack of historical takes, the NEFSC does not expect to have any adverse gear interactions with ESA-listed cetaceans in research surveys.

Long- and short-finned pilot whales—Due to the low levels of survey effort in hotspot areas for pilot whales, adherence to gear requirements for longline surveys, low numbers of hooks and sets used in longline surveys, and short soak times with continuous monitoring during gillnet surveys, we anticipate that any potential gear interactions are unlikely. There have been no entanglements or takes of long- or short-finned pilot whales in NEFSC fisheries research. Thus, there are no

requested take by M/SI + Level A of these species during the next five years.

Pinnipeds—Given the low historic number of seal interactions with research gear and the implementation of mitigation measures, future mortalities of pinnipeds would be considered rare or infrequent.

Take by Physical Disturbance—We note that the NEFSC conducts one set of research activities where the physical presence of researchers may result in Level B incidental harassment of pinnipeds on haulouts. Several research efforts to monitor fish communities in the Penobscot River Estuary require researchers in small skiffs to pass seals on one tidal ledge (Odum Ledge) where approximately 50 harbor seals and perhaps a few gray seals are periodically hauled out. These surveys do not entail intentional approaches to seals on haulouts (*i.e.,* the boats avoid close approach to tidal ledges), and no research gear is deployed near the tidal ledge; only behavioral disturbance incidental to small boat activities is anticipated. NEFSC conservatively estimated that all hauled out seals may be disturbed by passing research skiffs. However, researchers estimate that approximately 10 percent (5 animals in a group of 50) have been visibly disturbed in the past. This level of periodic incidental harassment would have temporary effects, would not be expected to alter the continued use of the tidal ledge by seals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we preliminarily find that the total marine mammal take from NEFSC fisheries research activities will have a negligible impact on the affected marine mammal species or stocks in the Atlantic coast region. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of combined Level A harassment, serious injury, and mortality are at insignificant levels relative to all affected stocks; and (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In addition, no M/SI is proposed for authorization for any species or stock that is listed under the ESA. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

Small Numbers Analyses

Please see Table 20 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than 7.5 percent for all stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks in the Atlantic coast region.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving, or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The NEFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that we propose the monitoring requirements described below.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in ''Proposed Mitigation.'' Marine mammal watches and monitoring occur prior to deployment of gear, and they continue until gear is brought back on board. If marine mammals are sighted in the area then the sampling station is either moved or canceled. When dedicated marine mammal observers are on board they will record the estimated species and number of animals present and their behavior. If marine mammal observers are not on board or available (due to vessel size limits and bunk space) then NEFSC would develop the protocols, provide training as practical, and evaluate the reports. This information can be valuable in understanding whether some species may be attracted to vessels or gears. NOAA vessels are required to monitor interactions with protected species (and report interactions to the NEFSC Director) but in reality are limited to direct interactions and reporting dead or entangled marine mammals. Similarly, there is a condition of grant and contract awards for monitoring of protected species takes.

In the Penobscot Bay only, the NEFSC will monitor any potential disturbance of pinnipeds on ledges, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale,

representing increasing seal response to disturbance, shown in Table 19.

Training

The NEFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The NEFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to Penobscot Bay surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to NEFSC staff, who may be professional biologists; the NEFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics.

The NEFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see ''Proposed Mitigation''), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant NEFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the NEFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in ''Proposed Mitigation.'' In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, NEFSC believes adopting these protocols for data collection will also increase the information on which ''serious injury'' determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. NEFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

NEFSC will record interaction information on either existing data forms created by other NMFS programs or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Reporting

As is normally the case, NEFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The NEFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to NEFSC leadership and to the Office of Protected Resources (OPR) by event, survey leg, and cruise. As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling the NEFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The NEFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant (see ''Estimated Take by Acoustic Harassment'' for further discussion), specific to each region; (2) summary information regarding use of all longline (including bottom and vertical lines) and trawl (including bottom trawl) gear, including number of sets, hook hours, tows, etc., specific to each region and gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any disturbance of pinnipeds during the Penobscot Bay surveys, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 19, and distance of closest approach; and (5) a written evaluation of the effectiveness of NEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any. The period of reporting will be a calendar year and the report must be submitted not less than ninety days following the end of a calendar year. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been entered into the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

The NEFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for

marine mammals that are released alive. NEFSC will require that the CS complete data forms (already developed and used by commercial fisheries observer programs) and address supplemental questions, both of which have been developed to aid in SI determinations. NEFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the NEFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Adaptive Management

The final regulations governing the take of marine mammals incidental to NEFSC fisheries research survey operations in three specified geographical regions would contain an adaptive management component. The inclusion of an adaptive management component will be both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

The reporting requirements associated with these proposed rules are designed to provide OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. OPR and the NEFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the NEFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions, in any of the three specified geographical regions for which we propose rulemakings. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the proposed specified geographical region (see Table 3). In the Northeast Region, research surveys occur in two areas that have been designated as critical habitat for the North Atlantic right whale (NOAA, 1994). These are the Cape Cod Bay (CCB) Critical Habitat Area and the Great South Channel GSC Critical Habitat Area. OPR has initiated consultation with NMFS' Greater Atlantic Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to the NEFSC under section 7 of the ESA. This consultation will be concluded prior to issuing any final rule.

National Environmental Policy Act (NEPA)

The NEFSC has prepared a Draft Environmental Assessment (EA; *Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Northeast Fisheries Science Center*) in accordance with NEPA and the regulations published by the Council on Environmental Quality. NMFS posted the document on the internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm*. We have independently evaluated the Draft EA and are proposing to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of NEFSC's EA by reference. Information in NEFSC's application, EA, the 2015 addendum to the application, and this notice collectively provide the environmental information related to proposed issuance of these regulations for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact, prior to a final decision on the incidental take authorization request.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the NEFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of 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. This action is being taken in response to a request from NMFS' Northeast Fisheries Science Center (NEFSC) for authorization to take marine mammals incidental to fisheries research conducted in a specified geographical region, over the course of five years from the date of issuance. As required by the MMPA, NMFS is proposing regulations to govern that take, specific to each geographical region and requests comments on the proposed regulations. The NEFSC is the sole entity that would be subject to the requirements in these proposed regulations. The NEFSC is a federal government entity that does not meet the RFA's definition of small entity, which is defined as a small governmental jurisdiction, small organization, or small business. For this reason, the rule will not have a significant economic impact on a substantial number of small entities. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the PRA because the applicant is a federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 30, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be added to read as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region

Sec.
219.31 Specified activity and specified geographical region.
219.32 [Reserved]
219.33 Permissible methods of taking.
219.34 Prohibitions.
219.35 Mitigation requirements.
219.36 Requirements for monitoring and reporting.
219.37 Letters of Authorization.
219.38 Renewals and modifications of Letters of Authorization.
219.39 [Reserved]
219.40 [Reserved]

Authority: 16 U.S.C. 1361 *et seq.*

Subpart D—Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries Research in the Atlantic Coast Region

§ 219.31 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center (NEFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by NEFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the Atlantic coast region.

§ 219.32 [Reserved]

§ 219.33 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 219.7 of this chapter, the Holder of the LOA (hereinafter ''NEFSC'') may incidentally, but not intentionally, take marine mammals within the area described in § 219.31(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 219.31(a) is limited to the indicated number of takes on an annual basis (by Level B harassment) or over the five-year period of validity of these regulations (by mortality) of the following species:

(1) Level B harassment:

(i) Cetaceans:

(A) North Atlantic right whale (*Eubalaena glacialis*)—21;

(B) Humpback whale (*Megaptera novaeangliae*)—15;

(C) Minke whale (*Balaenoptera acutorostrata*)—49;

(D) Sei whale (*Balaenoptera borealis*)—26;

(E) Fin whale (*Balaenoptera physalus*)—31;

(F) Blue whale (*Balaenoptera musculus*) –12;

(G) Sperm whale (*Physeter macrocephalus*)—29;

(H) Pygmy or dwarf sperm whale (*Kogia spp.*)—12;

(I) Cuvier's beaked whale (*Ziphius cavirostris*)—33;

(J) Blainville's, Gervais', Sowerby's, or True's beaked whales (*Mesoplodon spp.*)—33;

(K) Bottlenose dolphin (*Tursiops truncatus*)—685;

(L) Pantropical spotted dolphin (*Stenella attenuata*)—20;

(M) Atlantic spotted dolphin (*Stenella frontalis*)—26;

(N) Spinner dolphin (*Stenella longirostris*)—20;

(O) Striped dolphin (*Stenella coeruleoalba*)—246;

(P) Short-beaked common dolphin (*Delphinis delphis*)—1,393;

(Q) White-beaked dolphin (*Lagenorhynchus albirostris*)—58;

(R) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—154;

(S) Risso's dolphin (*Grampus griseus*)—79;

(T) Fraser's dolphin (*Lagenodelphis hosei*)—20;

(U) Clymene dolphin (*Stenella clymene*)—20;

(V) Melon-headed whale (*Peponocephala electra*)—20;

(W) Pygmy killer whale (*Feresa attenuata*)—20;

(X) Long and short-finned pilot whales (*Globicephala spp.*)—235;

(Y) Harbor porpoise (*Phocoena phocoena*)—113;

(ii) Pinnipeds:

(A) Gray seal (*Halichoerus grypus*)—80,010;

(B) Harp seal (*Pagophilus groenlandicus*)—10;

(C) Harbor seal (*Phoca vitulina*)—21,768.

(2) Mortality (trawl gear only):

(i) Cetaceans:

(A) Minke whale—5;

(B) Risso's dolphin—2;

(C) Bottlenose dolphin (Western North Atlantic offshore stock)—2;

(D) Bottlenose dolphin (Western North Atlantic Northern migratory stock)—2;

(E) Bottlenose dolphin (Western North Atlantic Southern migratory stock)—2;

(F) Atlantic spotted dolphin—2;

(G) Short-beaked common dolphin—5;

(H) White-beaked dolphin—2;

(I) Atlantic white-sided dolphin—2;

(J) Harbor porpoise—2;

(K) Unidentified cetacean (Family Delphinidae)—1;

(ii) Pinnipeds:

(A) Gray seal—1;

(B) Harbor seal—1;

(C) Unidentified pinniped—1.

(3) Mortality (gillnet gear only):

(i) Cetaceans:

(A) Bottlenose dolphin (Western North Atlantic offshore stock)—5;

(B) Bottlenose dolphin (Western North Atlantic Northern migratory stock)—5;

(C) Bottlenose dolphin (Western North Atlantic Southern migratory stock)—5;

(D) Atlantic spotted dolphin—1;

(E) Short-beaked common dolphin—1;

(F) Harbor porpoise—5;

(G) Unidentified cetacean (Family Delphinidae)—1;

(ii) Pinnipeds:

(A) Gray seal—5;

(B) Harbor seal—5;

(C) Unidentified pinniped—1.

(4) Mortality (pelagic longline gear only):

(A) Risso's dolphin—1;

(B) Bottlenose dolphin (Western North Atlantic offshore stock)—1;

(C) Bottlenose dolphin (Western North Atlantic Northern migratory stock)—1;

(D) Bottlenose dolphin (Western North Atlantic Southern migratory stock)—1;

(F) Short-beaked common dolphin—1;

(G) Unidentified cetacean (Family Delphinidae)—1;

(ii) Pinnipeds:

(A) Unidentified pinniped—1.

(B) [Reserved]

(5) Mortality (fyke net gear only):

(i) Pinnipeds:

(A) Gray seal—1;

(B) Harbor seal—5;

(C) Unidentified pinniped—1.

§ 219.34 Prohibitions.

Notwithstanding takings contemplated in § 219.31 and authorized by a LOA issued under

§ 216.106 of this chapter and § 219.7, no person may, in connection with the activities described in § 219.31:

(a) Take any marine mammal not specified in § 219.33(b);

(b) Take any marine mammal specified in § 219.33(b) in any manner other than as specified;

(c) Take a marine mammal specified in § 219.33(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal;

(d) Take a marine mammal specified in § 219.33(b) if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 219.37.

§ 219.35 Mitigation requirements.

When conducting the activities identified in § 219.31(a), the mitigation measures contained in any LOA issued under §§ 216.106 and 219.37 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) NEFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) NEFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) NEFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, NEFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) All vessels must comply with applicable and relevant take reduction plans, including any required use of acoustic deterrent devices.

(6) All vessels must comply with applicable speed restrictions.

(7) NEFSC shall implement handling and/or disentanglement protocols as specified in the guidance provided to NEFSC survey personnel (''Identification, Handling, and Release of Protected Species'').

(b) Beam, mid-water, and bottom trawl survey protocols:

(1) NEFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) prior to sampling. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the ''move-on rule.'' If a marine mammal is sighted around the vessel before setting the gear, NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision.

(4) NEFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, NEFSC may resume trawl operations when practicable only when the animals are believed to have departed the area. NEFSC may use best professional judgment in making this determination.

(6) NEFSC shall implement standard survey protocols to minimize potential for marine mammal interaction, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(c) Dredge survey protocols:

(1) NEFSC shall deploy dredge gear as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) prior to sampling. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the ''move-on rule.'' If marine mammals are sighted around the vessel before setting the gear, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct dredge survey activity when animals remain near the vessel.

(4) NEFSC shall maintain visual monitoring effort during the entire period of time that dredge gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(5) If dredging operations have been suspended because of the presence of marine mammals, NEFSC may resume operations when practicable only when the animals are believed to have departed the area. NEFSC may use best professional judgment in making this determination.

(6) NEFSC shall carefully empty the dredge gear as quickly as possible upon retrieval to determine if marine mammals are present in the gear.

(d) Longline survey protocols:

(1) NEFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall initiate marine mammal watches (visual observation) no less than thirty minutes prior to both deployment and retrieval of the longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular).

During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NEFSC shall implement the ''move-on rule.'' If marine mammals are sighted near the vessel 30 minutes before setting the gear, the NEFSC may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct longline survey activity when animals remain near the vessel.

(4) For the Apex Predators Bottom Longline Coastal Shark Survey, if one or more marine mammals are observed within 1 nautical mile of the planned location in the thirty minutes before gear deployment, NEFSC shall transit to a different section of the sampling area to maintain a minimum set distance of 1 nm from the observed marine mammals. If, after moving on, marine mammals remain within 1 nautical mile, NEFSC may decide to move again or to skip the station. NEFSC may use best professional judgment in making this decision but may not elect to conduct pelagic longline survey activity when animals remain within the 1-nautical mile zone.

(5) NEFSC shall maintain visual monitoring effort during the entire period of gear deployment or retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, NEFSC shall take the most appropriate action to avoid marine mammal interaction. NEFSC may use best professional judgment in making this decision.

(6) If deployment or retrieval operations have been suspended because of the presence of marine mammals, NEFSC may resume such operations after there are no sightings of marine mammals for at least 15 minutes within the area or within the 1 nautical mile area for the Apex Predators Bottom Longline Coastal Shark Survey. NEFSC may use best professional judgment in making this decision.

(7) NEFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(e) Gillnet survey protocols:

(1) NEFSC and/or cooperating institutions shall deploy gillnet gear as soon as is practicable upon arrival at the sampling station.

(2) NEFSC and/or cooperating institutions shall initiate marine mammal watches (visual observation) prior to both deployment and retrieval of the gillnet gear. Marine mammal watches shall be conducted during the soak by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular).

(3) NEFSC and/or cooperating institutions shall implement the ''move-on rule.'' If marine mammals are sighted near the vessel before setting the gear, the NEFSC, as appropriate may decide to move the vessel away from the marine mammal to a different section of the sampling area if the animal appears to be at risk of interaction with the gear. If, after moving on, marine mammals are still visible from the vessel, the NEFSC may decide to move again or to skip the station. The NEFSC may use best professional judgment in making this decision but may not elect to conduct the gillnet survey activity when animals remain near the vessel.

(4) If marine mammals are sighted near the vessel during the soak and are determined to be at risk of interacting with the gear, then the NEFSC as appropriate shall carefully retrieve the gear as quickly as possible. NEFSC and/or cooperating institutions may use best professional judgment in making this decision.

(5) NEFSC shall implement standard survey protocols, including continuously monitoring the gillnet gear during soak time; removing debris with each pass as the net is reset into the water to minimize bycatch.

(6) NEFSC shall ensure that surveys deploy acoustic pingers on gillnets in areas where required for commercial fisheries. NEFSC must ensure that the devices are operating properly before deploying the net.

(7) NEFSC shall ensure that cooperating institutions conducting gillnet surveys adhere to monitoring and mitigation requirements and shall include required protocols in all survey instructions, contracts, and agreements.

(8) For the COASTSPAN gillnet surveys, the NEFSC will actively monitor for potential bottlenose dolphin entanglements by hand-checking the gillnet every 20 minutes. In the unexpected case of a bottlenose dolphin entanglement, the NEFSC would request and arrange for expedited genetic sampling for stock determination. The NEFSC would also photograph the dorsal fin and submit the image to the Southeast Stranding Coordinator for identification/matching to bottlenose dolphins in the Mid-Atlantic Bottlenose Dolphin Photo-identification Catalog.

(f) Fyke net gear protocols:

(1) NEFSC shall conduct fyke net gear deployment as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both deployment and retrieval of the fyke net gear. NEFSC shall conduct monitoring and retrieval of the gear every 12 to 24-hour soak period.

(3) If marine mammals are in close proximity (approximately 100 meters) of the setting location, NEFSC shall determine if the set location should be moved. NEFSC may use best professional judgment in making this decision.

(4) If marine mammals are observed to interact with the gear during the setting, NEFSC shall lift and remove the gear from the water.

(5) NEFSC must install and use a marine mammal excluder device at all times when the 2-meter fyke net is used.

(g) Beach seine gear protocols:

(1) NEFSC shall conduct beach seine deployment as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both deployment and retrieval of the seine net gear.

(3) If marine mammals are in close proximity of the seining location, NEFSC shall lift the net and remove it from the water. NEFSC may use best professional judgment in making this decision.

(h) Rotary screw trap gear protocols:

(1) NEFSC shall conduct rotary screw trap deployment as soon as is practicable upon arrival at the sampling station.

(2) NEFSC shall visually survey the area prior to both setting and retrieval of the rotary screw trap gear. If marine mammals are observed in the sampling area, NEFSC shall suspend or delay the sampling. NEFSC may use best professional judgment in making this decision.

(3) NEFSC shall tend to the trap on a daily basis to monitor for marine mammal interactions with the gear.

(4) If the rotary screw trap captures a marine mammal, NEFSC shall carefully release the animal as soon as possible.

§ 219.36 Requirements for monitoring and reporting.

(a) Visual monitoring program:

(1) Marine mammal visual monitoring shall occur: prior to deployment of beam, mid-water, and bottom trawl, pelagic longline, gillnet, fyke net, beach seine, and rotary screw trap gear; throughout deployment of gear and active fishing of all research gears; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those

navigating the vessel and/or other crew) at all times when the vessel is being operated.

(3) NEFSC shall monitor any potential disturbance of pinnipeds on ledges, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance shall be recorded according to a three-point scale representing increasing seal response to disturbance.

(b) Training:

(1) NEFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. NEFSC may determine the agenda for these trainings.

(2) NEFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) NEFSC shall coordinate with NMFS' Southeast Fisheries Science Center (SEFSC) regarding surveys conducted in the southern portion of the Atlantic coast region, such that training and guidance related to handling procedures and data collection is consistent.

(c) Handling procedures and data collection:

(1) NEFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, NEFSC shall collect necessary data to facilitate a serious injury determination.

(3) NEFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) NEFSC shall record such data on standardized forms, which will be subject to approval by OPR. NEFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(d) Reporting:

(1) NEFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence.

(2) NEFSC shall provide written reports to OPR following any marine mammal interaction (animal captured or entangled in research gear) and/or survey leg or cruise, summarizing survey effort on the leg or cruise. In the event of a marine mammal interaction, these reports shall include full descriptions of any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling.

(3) Annual reporting:

(i) NEFSC shall submit an annual summary report to OPR not later than ninety days following the end of a calendar year, with the reporting period being a given calendar year.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, DSM300 (or equivalent sources) were predominant;

(B) Summary information regarding use of the following: all trawl gear, all longline gear, all gillnet gear, all dredge gear, fyke net gear, beach seine net gear, and rotary screw trap gear (including number of sets, hook hours, tows, and tending frequency specific to each gear type);

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) Summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to a three-point scale of response severity (1 = alert; 2 = movement; 3 = flight), and distance of closest approach;

(E) A written evaluation of the effectiveness of NEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(e) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.31(a) clearly causes the take of a marine mammal in a prohibited manner, NEFSC shall immediately cease the specified activities and report the incident to OPR and the Greater Atlantic Region Stranding Coordinator, NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (including wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) Activities shall not resume until OPR is able to review the circumstances of the prohibited take. OPR shall work with NEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NEFSC may not resume their activities until notified by OPR.

(3) In the event that NEFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (for example, in less than a moderate state of decomposition), NEFSC shall immediately report the incident to OPR and the Greater Atlantic Region Regional Stranding Coordinator, NMFS. The report must include the information identified in § 219.36(e)(1) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with NEFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that NEFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.31(a) (for example, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), NEFSC shall report the incident to OPR and the Greater Atlantic Region Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. NEFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

§ 219.37 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations,

NEFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, NEFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NEFSC must apply for and obtain a modification of the LOA as described in § 219.38.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.38 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 219.37 for the activity identified in § 219.31(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 219.37 for the activity identified in § 219.31(a) may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from NEFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 219.32(b), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 219.39 [Reserved]

§ 219.40 [Reserved]

[FR Doc. 2015–16574 Filed 7–8–15; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 131 July 9, 2015

Part IV

Department of Education

34 CFR Parts 668, 682, and 685

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

RIN 1840–AD18

[Docket ID ED–2014–OPE–0161]

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to create a new income-contingent repayment plan in accordance with the President's initiative to allow more Direct Loan borrowers to cap their loan payments at 10 percent of their monthly incomes. The Secretary is also proposing changes to the Federal Family Education Loan (FFEL) Program and Direct Loan Program regulations to streamline and enhance existing processes and provide additional support to struggling borrowers. These proposed regulations would also amend the Student Assistance General Provisions regulations by expanding the circumstances under which an institution may challenge or appeal a draft or final cohort default rate based on the institution's participation rate index.

DATES: We must receive your comments on or before August 10, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Giana, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006–8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For further information related to the Servicemembers Civil Relief Act (SCRA), the treatment of lump sum payments made under Department of Defense student loan repayment programs for the purposes of public service loan forgiveness, and expanding the use of the participation rate index (PRI) challenge and appeal, Barbara Hoblitzell at (202) 502–7649 or by email at: *Barbara.Hoblitzell@ed.gov*. For information related to loan rehabilitation, Ian Foss at (202) 377–3681 or by email at: *Ian.Foss@ed.gov*. For information related to the Revised Pay As You Earn repayment plan, Brian Smith or Jon Utz at (202) 502–7551 or (202) 377–4040 or by email at: *Brian.Smith@ed.gov* or *Jon.Utz@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: These proposed regulations would amend the Student Assistance General Provisions regulations governing Direct Loan cohort default rates (CDRs) to expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI. In addition, we are proposing changes to the FFEL Program regulations to streamline and enhance existing processes and provide support to borrowers by establishing new procedures for FFEL Program loan holders to identify servicemembers who may be eligible for benefits under the SCRA. We are proposing regulations that would require guaranty agencies to provide FFEL Program borrowers who are in the process of rehabilitating a defaulted loan with information on repayment plans available to them after the loan has been rehabilitated as well as additional financial and economic education materials. We are also proposing several technical changes to the loan rehabilitation provisions contained in § 682.405. In addition, these proposed regulations would add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209 of the Direct Loan Program regulations. The REPAYE plan is modeled on the existing Pay As You Earn repayment plan, and would be available to all Direct Loan student borrowers regardless of when the borrower took out the loans. Finally, the proposed regulations would also allow lump sum payments made through student loan repayment programs administered by the Department of Defense to count as qualifying payments for purpose of the Public Service Loan Forgiveness Program.

Summary of the Major Provisions of This Regulatory Action:

To expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or official CDR based on the institution's PRI, the proposed regulations would—

- Permit an institution to bring a timely PRI challenge or appeal in any year that the institution's CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years.
- Provide that an institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal to 30 percent, and will not be placed on provisional certification based on two such rates, if it timely brings an appeal or challenge with respect to any of the relevant rates and demonstrates a PRI less than or equal to 0.0625, provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.
- Provide that a successful PRI challenge with respect to a draft CDR is effective in preventing the institution from being placed on provisional certification or losing eligibility in

subsequent years based on the official CDR for that year if the official rate is less than or equal to the draft rate.

To reduce the burden on active duty servicemembers who may be entitled to an interest rate reduction under the SCRA, the proposed regulations would—

• Require FFEL Program loan holders to proactively use the authoritative database maintained by the Department of Defense to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent.

• Permit a borrower to use a form developed by the Secretary to provide the loan holder with alternative evidence of active duty service to demonstrate eligibility when the borrower believes that the information contained in the Department of Defense database may be inaccurate or incomplete.

In regard to loan rehabilitation, the proposed regulations would—

• To assist with the transition to loan repayment for a borrower who rehabilitates a defaulted loan, require a guaranty agency to: Provide each borrower with whom it has entered into a loan rehabilitation agreement with information on repayment plans available to the borrower after rehabilitating the defaulted loan; explain to the borrower how to select a repayment plan; and provide financial and economic education materials to borrowers who successfully complete loan rehabilitation.

• To conform with the Higher Education Act of 1965, as amended (HEA), amend § 682.405 with respect to the cap on collection costs that may be added to a rehabilitated loan when it is sold to a new holder and the treatment of rehabilitated loans for which the guaranty agency cannot secure a buyer.

To establish a new widely available income-contingent repayment plan targeted to the neediest borrowers, the proposed REPAYE regulations would—

• In the case of a married borrower filing a separate Federal income tax return, use the adjusted gross income (AGI) of both the borrower and the borrower's spouse to determine whether the borrower has a partial financial hardship (PFH) and to calculate the monthly payment amount. A married borrower filing separately who is separated from his or her spouse or who is unable to reasonably access his or her spouse's income is not required to provide his or her spouse's AGI.

• Limit the amount of interest charged to the borrower of a subsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization). This limitation applies after the consecutive three-year period during which the Secretary does not charge the interest that accrues on subsidized loans during periods of negative amortization.

• Limit the amount of interest charged to the borrower of an unsubsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization).

• For a borrower who only has loans received to pay for undergraduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 20 years of qualifying payments.

• For a borrower who has at least one loan received to pay for graduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 25 years of qualifying payments.

• Provide that, for each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower. If a process becomes available in the future that allows borrowers to give consent for the Department to access their income and family size information from the Internal Revenue Service (IRS) or another Federal source, the proposed regulations would allow use of such a process for recalculating a borrower's monthly payment amount.

• Provide that, for each year after a borrower's initial year on the REPAYE plan, the Secretary determines whether the borrower has a PFH. If the borrower does not have a PFH, but previously had a PFH, any accrued interest would be capitalized.

• Provide that, if the borrower does not provide the income information needed to recalculate the monthly repayment amount, the borrower is removed from the REPAYE plan and placed in an alternative repayment plan. The monthly payment amount under the alternative repayment plan would equal the amount required to pay off the loan within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end date of the 20- or 25-year REPAYE plan repayment period, whichever is earlier.

• Allow the borrower to return to the REPAYE plan if the borrower provides the Secretary with the income information for the period of time that the borrower was on the alternative repayment plan or another repayment plan. If the payments the borrower was required to make under the alternative repayment plan or the other repayment plan are less than the payments the borrower would have been required to make under the REPAYE plan, the borrower's monthly REPAYE payment amount would be adjusted to ensure that the excess amount owed by the borrower is paid in full by the end of the REPAYE plan repayment period.

• Provide that payments made under the alternative repayment plan would not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program, but may count in determining eligibility for loan forgiveness under the REPAYE plan, the income-contingent repayment plan, the income-based repayment plans, or the Pay As You Earn repayment plan (each of these plans may be referred to as an ''income-driven repayment plan'' or ''IDR plan'') if the borrower returns to the REPAYE plan or changes to another income-driven repayment plan.

The proposed regulations also would allow lump sum payments made on a borrower's behalf through the student loan repayment programs administered by the Department of Defense to count as qualifying payments for purposes of the Public Service Loan Forgiveness Program in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the benefits of the proposed regulations, which would require guaranty agencies to provide additional information to borrowers in the process of rehabilitating a defaulted loan, include a reduction of the risk that the borrower would re-default on the loan after having successfully completed loan rehabilitation.

There would be costs incurred by guaranty agencies under the proposed regulations. In particular, guaranty agencies would be required to make information about repayment plans available to borrowers during the rehabilitation process.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify

clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking, as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Secretary proposes to amend §§ 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 682.410, 685.202, 685.208, 685.209, 685.219, and 685.221 of title 34 of the Code of Federal Regulations (CFR). The regulations in 34 CFR part 668 pertain to Student Assistance General Provisions. The regulations in 34 CFR part 682 pertain to the FFEL Program. The regulations in 34 CFR part 685 pertain to the Direct Loan Program. We are proposing these amendments to: (1) Establish a new income-contingent repayment plan in the Direct Loan Program; (2) establish procedures for FFEL Program loan holders to use to identify U.S. military servicemembers who may be eligible for a lower interest rate on their FFEL Program loans under section 527 of the SCRA; (3) expand availability of PRI challenges and appeals from the potential consequences of an institution's CDR; (4) provide guaranty agency support for borrowers who are rehabilitating a defaulted FFEL Program loan; (5) make two technical corrections to reflect the statutory changes to the provisions governing loan rehabilitation in the FFEL Program; and (6) amend the application of lump sum student loan payments by the Department of Defense on behalf of borrowers pursuing public service loan forgiveness.

Public Participation

On September 3, 2014, we published a notice in the **Federal Register** (79 FR 52273) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations to allow more student borrowers of Federal Direct Loans to use a ''Pay as You Earn'' repayment plan in accordance with the Presidential Memorandum issued on June 9, 2014. We also announced two public hearings at which interested parties could comment on the topic suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. The hearings were held on—

October 23, 2014, in Washington, DC; and

November 14, 2014, in Los Angeles, California.

Transcripts from the public hearings are available at *www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html*.

We also invited parties unable to attend a public hearing to submit written comments on the proposed topics and to submit other topics for consideration. Written comments submitted in response to the September 3, 2014, **Federal Register** notice may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2014–OPE–0161. Instructions for finding comments are also available on the site under ''How to Use Regulations.gov'' in the Help section.

On December 19, 2014, we published a notice in the **Federal Register** (79 FR 75771) requesting nominations for negotiators to serve on the negotiated rulemaking committee and setting a schedule for committee meetings.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary in most cases must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html*.

On December 19, 2014, the Department published a notice in the **Federal Register** (79 FR 52273) announcing its intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the Direct Loan Program authorized under title IV of the HEA. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; groups representing U.S. military servicemembers or veterans; financial aid administrators at postsecondary institutions; State attorneys general and other appropriate State officials; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, nonprofit institutions of higher education; private, for-profit institutions of higher

education; FFEL Program lenders and loan servicers; and FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies). The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Devon Graves, California State Student Association, and Jessi Morales (alternate), Generation Progress, representing students.

Toby Merrill, Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, and Johnson Tyler (alternate), South Brooklyn Legal Services, representing legal assistance organizations that represent students.

Jennifer Wang, Young Invincibles, and Suzanne Martindale (alternate), Consumers Union, representing consumer advocacy organizations.

Samuel Levine, Consumer Fraud Bureau, Office of the Attorney General of Illinois, and Tyler Stewart (alternate), Consumer Protection Division, Kentucky Office of the Attorney General, representing State attorneys general and other appropriate State officials.

Matthew Randle, Student Veterans of America, and Chris Cate (alternate), Student Veterans of America, representing U.S. military servicemembers or veterans.

Scott Cline, California College of the Arts, and Clair Jacobi (alternate), New York Institute of Technology College of Osteopathic Medicine, representing financial aid administrators.

Patricia Hurley, Glendale Community College, representing minority serving institutions.

Shannon Sheaff, Mohave Community College, and Helen Faith (alternate), Lane Community College, representing two-year public institutions.

Craig Fennell, Temple University, and Rachelle Feldman (alternate), University of California, Berkeley, representing four-year public institutions.

Marian Dill, Lee University, and David DeBoer (alternate), Davenport University, representing private, non-profit institutions.

Melvina Johnson, Laureate Education, Inc., and Robert Mills (alternate), Ohio Centers for Broadcasting, Miami and Colorado Media Schools, representing private, for-profit institutions.

William Shaffner, MOHELA—Higher Education Loan Authority of Missouri, and Darin Katzberg (alternate), Nelnet, representing FFEL Program lenders and loan servicers.

Nancy Masten, Great Lakes Higher Educational Guaranty Corporation, and Diane Freundel (alternate), American Education Services/Pennsylvania Higher Education Assistance Agency, representing FFEL Program guaranty agencies and guaranty agency servicers.

Gail McLarnon, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on February 24–26, 2015, March 31–April 2, 2015, and April 28–30, 2015.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: PRI challenges and appeals of potential institutional CDR sanctions, implementation of the SCRA in the FFEL Program, guaranty agency support for borrowers completing rehabilitation of a defaulted loan, two technical corrections to the loan rehabilitation regulations, the REPAYE plan, and the application of Department of Defense lump sum payments for borrowers seeking public service loan forgiveness. Under the protocols, a final consensus would have to include consensus on all six issues.

During the meeting, the Department explained that it planned to implement the provisions of the final REPAYE plan regulations in December 2015 and the final PRI challenge and appeal regulations in February 2017; the remaining regulatory changes would take effect in July 2016. Although non-Federal negotiators expressed concern that the projected implementation date for the expanded PRI challenge and appeals process could result in some community colleges choosing to leave the Direct Loan Program in the intervening period, the Department's capacity to provide increased opportunities for CDR challenges and appeals is predicated in the first instance on the automated support that will be provided through development of its planned computerized data challenge and appeals solution system(DCAS) within Federal Student Aid. DCAS is slated [to come on line?] for implementation in 2017.

During committee meetings, the committee reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on April 30, 2015, the committee reached consensus on the Department's proposed regulations. For this reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking and the organizations that they represent have agreed to refrain from commenting negatively on the consensus-based regulatory language. For more information on the negotiated rulemaking sessions, please visit: *www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info*.

Summary of Relevant Data

Income-Driven Repayment Data

At the request of the non-Federal negotiators, the Department provided certain data on borrower participation in the existing income-driven repayment or IDR plans. Specifically, we provided data on the tax filing status of borrowers applying for any IDR plan to show how many and what percentage are married and file separate Federal tax returns. We also provided data on borrowers who did not timely provide income documentation for the annual recertification of their income, including to what extent they recertified their income late or went delinquent, and information about borrowers who were in the PAYE repayment plan and who left that plan for another plan. We also provided the non-Federal negotiators data on year-to-year income changes for borrowers repaying their loans through an IDR plan. These data are available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html#2*.

The non-Federal negotiators expressed support for a process that would allow borrowers to give authorization to the Department to access their IRS income information for multiple years for the purposes of maintaining IDR enrollment. The Department would also support such a process, and in an Executive Memorandum dated March 10, 2015, the President tasked the Department to work with the IRS and Treasury to develop a plan to create this process. The non-Federal negotiators also expressed concern that the timing, contents, and methods of communicating with borrowers who must submit annual documentation of their income to recalculate their payment under an IDR plans were contributing to borrowers missing the deadline for submitting income

documentation. The Department announced it would conduct a pilot to test enhanced messaging techniques that will inform whether the current process should be modified to prevent more borrowers from missing their annual deadline. More information about the pilot is available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html#2*.

Summary of Proposed Changes

The proposed regulations would—

- Expand the provisions of §§ 668.16, 668.204, 668.208, and 668.214 regarding the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI.
- Amend §§ 682.202, 682.208, and 682.410 to require loan holders to determine a borrower's active duty military status for purposes of applying the SCRA maximum interest rate based on information from the authoritative database maintained by the Department of Defense.
- Amend § 685.202 to remove language that refers to the borrower's request for application of the SCRA interest rate limit and provide instead that the Secretary applies the SCRA interest rate limit ''upon receipt'' of evidence of the borrower's eligibility.
- Modify § 682.405 to require a guaranty agency to provide information to a borrower who is in the process of rehabilitating a defaulted FFEL Program loan to help ensure that the borrower understands the available repayment options upon successfully completing the loan rehabilitation.
- Make a technical correction to § 682.405 to conform with the HEA to reflect that the cap on collection costs that may be added to the unpaid principal of a rehabilitated loan when the loan is sold or assigned is 16 percent and require guaranty agencies to assign to the Secretary rehabilitated loans that they have been unable to sell to an eligible lender.
- Amend §§ 685.208, 685.209, 685.219, and 685.221 to provide for the REPAYE plan.
- Amend § 685.219 to provide for the application of lump sum payments made on a borrower's behalf through student loan repayment programs administered by the Department of Defense for purposes of the Public Service Loan Forgiveness Program in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Participation Rate Index Challenges and Appeals (§§ 668.16, 668.204, 668.208, and 668.214)

Statute: Sections 435(a)(2), (a)(8), and (m) of the HEA prescribe how PRIs are to be calculated and contain provisions regarding how and when an institution may challenge or appeal potential sanctions resulting from an institution's CDRs based on an applicable PRI.

Current Regulations: Section 668.204(c) provides the circumstances under which an institution may challenge the potential consequences of a draft or official CDR during the draft rate process, including challenges based on the institution's applicable PRI. Specifically, under § 668.204(c)(1), institutions with CDRs high enough to trigger sanctions (30 percent for two years for provisional certification, or, for loss of eligibility, either 30 percent for three consecutive years or 40 percent in a single year) may challenge those anticipated sanctions based on their PRI—that is, if the proportion of regular students enrolled on at least a half time basis who borrow certain Federal student loans is equal to or lower than the applicable statutory or regulatory threshold. Under § 668.204(c)(1)(ii) and (iii), institutions may only bring a PRI-based challenge in the year a sanction would be imposed.

Section 668.214 defines the conditions under which and the process by which an institution may appeal from the potential consequences of a CDR based on the PRI of Federal student loan borrowers relative to the institution's total enrollment of regular students who attended half time or more during a relevant twelve-month period selected by the school. Again, under § 668.214(a), PRI appeals may only be brought in the year a sanction would be imposed.

Section 668.16(m) specifies the circumstances in which the Department may provisionally certify an institution's program participation agreement based on the institution's CDRs, and the impact of requests for adjustment and appeals on imposition of that sanction.

Section 668.208 provides general requirements for institutions seeking to adjust their official CDRs and to bring certain appeals from their consequences, including provisions preventing institutions from bringing the same type of appeal twice from the same CDR, and from appealing from a CDR after sanctions have already been imposed based on it.

Proposed Regulations: The proposed regulations would modify § 668.204 to permit an institution to bring a timely challenge, based on the relevant PRI (the number of regular students enrolled on at least a half time basis who borrow, divided by the total number of regular students enrolled on at least a half time basis) being equal to or less than 0.0625, in any year the institution's draft or official CDR was less than or equal to 40 percent but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (counting the draft rate as the most recent rate), provided that the institution had not brought a PRI challenge or appeal with respect to that rate before, and that the institution had not previously lost eligibility or been placed on provisional certification based on that rate. The rule would retain the existing provision permitting an institution to challenge the potential consequences of a draft rate exceeding 40 percent, if the PRI is less than or equal to 0.0832.

Section 668.204 would also be modified to provide that a successful PRI challenge from a draft CDR that exceeds the sanction thresholds of 40 percent or 30 percent avoids provisional certification and loss of eligibility based on the corresponding official CDR, as long as the official CDR is less than or equal to the draft CDR. In such a case, the institution would not be required to bring a PRI appeal with respect to the official CDR it had successfully challenged at the draft rate stage, and no sanctions would be imposed, either in that year or a later year, based on the official CDR. Moreover, as under current law, a successful PRI challenge with respect to a draft CDR would preclude the imposition of sanctions in the year the official CDR was issued, regardless of whether the official CDR was higher or lower than the draft CDR. However, if the official CDR was higher than the draft CDR, the institution would need to bring a PRI appeal or challenge from the official, higher CDR, to avoid that higher CDR possibly resulting in provisional certification or loss of eligibility, as applicable, in a later year. An earlier challenge to a lower, draft CDR would not be sufficient to avoid sanctions from being based on the higher official rate in later years if that official rate was one of three successive official rates of 30 percent or higher.

The proposed regulations would also amend § 668.214 to provide that an

institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal to 30 percent, and will not be placed on provisional certification based on two such rates, if it has timely brought an appeal with respect to any of the relevant rates and demonstrated a PRI less than or equal to 0.0625. As in current law, the institution may make this appeal only if it has not brought a PRI challenge or appeal with respect to that rate before, and if it has not previously lost eligibility or been placed on provisional certification based on that rate. The rule would retain the existing provision for an institution to appeal from loss of eligibility if its most recent official CDR exceeds 40 percent, if the PRI is less than or equal to 0.0832. The time for appealing would run from the date of receipt of notice of the rate or, if the most recent official rate exceeds 40 percent, the date of receipt of notice of loss of eligibility.

The proposed regulations would amend § 668.16 to clarify that if an institution brought a PRI challenge or appeal with respect to a CDR under the expanded circumstances described in the proposed regulations, provisional certification would not be imposed based on that CDR as long as the challenge or appeal was either pending or successful.

The proposed regulations would also amend § 668.208 to incorporate references to PRI challenges and appeals in existing provisions relating to the effect of, and limitations on, CDR appeals.

Reasons: Community college administrators and advocates, including a non-Federal negotiator, have requested an annual challenge and appeals process that would permit institutions to appeal or challenge based on PRI in any year following issuance of a draft or official rate equaling or exceeding 30 percent, rather than only in years in which a sanction would be imposed. They argued that an annual PRI challenge and appeals process would provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. The negotiator suggested that enabling schools to receive a PRI exemption at any point during the reporting process would mitigate the impact of negative reports regarding their borrower repayment rate and encourage more community colleges to participate in the title IV loan programs. The negotiator further requested that the PRI appeal process be simplified to reduce the administrative burden on both institutions and the Department.

We are proposing to provide additional opportunities for institutions to bring PRI challenges and appeals to lessen the likelihood that an institution will, through its failure to bring a challenge or appeal in one of the opportunities available under existing law, experience sanctions based on a CDR that includes only a relatively small proportion of its full-time enrollment of regular students, and to permit the institution an opportunity to more swiftly establish that a high CDR is not reflective of the bulk of its student body. Under the proposed regulations, there would be multiple timeframes in which a challenge or appeal could be brought to prevent imposition of sanctions, subject only to provisions limiting the institution to one PRI challenge or appeal per draft or official CDR, and precluding the institution from challenging or appealing a CDR on which a sanction has already been imposed. The proposed regulations would meet the request that we reduce administrative burden by relieving institutions of the responsibility for bringing a PRI appeal in a later year, if the institution already challenged the draft rate, and the official rate was equal to or lower than that draft rate. (If the official rate were higher than a draft rate, the institution would still need to bring a PRI appeal.)

Non-Federal negotiators were concerned that the delayed implementation of the changes to the PRI challenge and appeals process coincident would result in some community colleges choosing to leave the Direct Loan Program in the intervening period. However, the ability to provide increased opportunities for CDR challenges and appeals is predicated on the automated support that will be provided through the implementation of the data challenge and appeals solution (DCAS) within Federal Student Aid. DCAS is slated for implementation in 2017.

Servicemembers Civil Relief Act (§§ 682.202, 682.208, 682.410, and 685.202)

Statute: Section 428(d) of the HEA provides that the maximum interest rate that may be charged to certain servicemembers under section 207 of the SCRA, 50 U.S.C. App. § 527, applies to loans under the Direct Loan Program and the FFEL Program.

Current Regulations: Section 682.202(a)(8) of the FFEL Program regulations and § 685.202(a)(11) of the Direct Loan Program regulations provide that once a loan holder (the Secretary or a FFEL Program loan holder) receives a borrower's written request for application of the SCRA maximum interest rate and a copy of the borrower's military orders, the maximum interest rate on any Direct Loan or FFEL Program loan made prior to the borrower entering active duty status is six percent, as provided in 50 U.S.C. 527, App. section 207(a), while the borrower is on active duty status.

Section 682.410(b)(3) of the FFEL Program regulations establishes the interest rate guaranty agencies may charge borrowers on defaulted loans they hold.

Proposed Regulations: The proposed regulations would modify § 682.202(a)(8) to require FFEL Program loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information obtained from the authoritative electronic database maintained by the Department of Defense and to clarify that, under the SCRA, the interest rate includes any other charges or fees applied to the loan.

The proposed regulations would add new paragraph § 682.208(j) to define the requirements for FFEL Program loan holders to use the official electronic database maintained by the Department of Defense to identify all borrowers who are active duty servicemembers and who are eligible for the SCRA interest limit, confirm the dates of the borrower's active duty status, and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent. These requirements would include—

- Applying the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database or alternative evidence of active duty service received by the loan holder, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date;
- In the case of a reservist, using the reservist's notification date as the start date of the military service period;
- For PLUS loans with an endorser, applying the SCRA interest limit on the loan based on the borrower's or endorser's active duty status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan;
- In cases where both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, specifying that the loan holder must use the earliest active duty start date of either party and the latest

active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit;

- For joint consolidation loans, applying the SCRA interest rate limit on the loan if either of the borrowers is eligible for the limit;
- If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit, specifying that the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit;
- If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, specifying that the underlying loan holder must return the overpayment to the holder of the consolidation loan; and
- For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan (*i.e.,* where the SCRA benefit is granted just before a loan is paid in full), specifying that the loan holder must refund the amount of that overpayment to the borrower.

The proposed regulations would amend § 682.410(b)(3) of the FFEL Program regulations to include a requirement that guaranty agencies apply the SCRA interest rate to the loans of eligible borrowers.

The proposed regulations would also amend § 685.202(a)(11) to clarify that, in regard to Direct Loans, the Secretary will apply the SCRA interest rate limit upon the receipt of evidence from the official electronic database maintained by the Department of Defense or other information provided by the borrower of the borrower's active duty military service and that, under SCRA, the interest rate includes any other charges or fees applied to the loan.

Reasons: In 2011, we allowed servicers to use the DMDC database to clarify beginning and end dates of military service, where orders were unclear. The proposed regulations would formalize a process that the Department and many FFEL Program lenders have been using since 2014 to confirm that a borrower with an outstanding loan who is (or has been) in military service and the dates of that service, for the purposes of the SCRA interest rate limitation. The proposed regulations also reflect input from the negotiating committee.

Background

In June 2011, we sent a letter to organizations representing FFEL Program lenders, guaranty agencies, and loan servicers in response to their questions regarding the requirements for applying the SCRA interest rate limit. In that letter, we noted that under the SCRA, a borrower (or the borrower's representative) must provide the lender or servicer with a copy of the borrower's military orders that reflect the borrower's active duty status and the borrower must make a written request to the lender to apply the lower interest rate under the SCRA. In response to a series of later inquiries, the Department clarified that the borrower could submit the written request for the SCRA interest rate benefit through electronic means (such as an email or text message).

On August 25, 2014, we issued a Dear Colleague Letter (DCL) (*http://ifap.ed.gov/dpcletters/GEN1416.html*) to announce that we had adopted new procedures for determining which borrowers with loans held by the Department are eligible for the interest rate limit under the SCRA and for what periods.

Under the new procedures, the Department's loan servicers use the Department of Defense's SCRA Web site, which is available at *www.dmdc.osd.mil/appj/scra*, to access the Defense Manpower Data Center (DMDC) database. The DMDC database provides sufficient supporting documentation of an individual's eligibility for the SCRA interest rate limitation by identifying borrowers who are or have been in military service and the dates of that service. We directed our loan servicers to check the names of the borrowers of the loans they service against the DMDC database and to apply the interest rate limitation to the accounts of eligible borrowers without a request from the borrower.

At the same time, we authorized and encouraged FFEL Program lenders and lender-servicers to use the DMDC's SCRA Web site to identify borrowers who are eligible for the interest rate limitation under the SCRA and to apply that limitation. We encouraged FFEL Program loan holders and servicers to check the names of all borrowers whose loans they service against the DMDC database to identify borrowers who qualify for the SCRA interest rate limitation. Once a borrower's status and service dates had been confirmed using the DMDC database, we authorized the loan holder to use the DMDC database-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember's military orders to support the borrower's receipt of the SCRA interest rate limitation.

The DCL instructed the loan servicer to retain the supporting information from the DMDC database in the borrower's file and to notify the borrower when the interest rate on the loan has been changed.

Under the process described in the DCL, the applicant does not need to request the lower interest rate or provide any notice to the loan servicer, and the loan servicer would rely on the DMDC database and not on information from the servicemember. Under these circumstances, and under these proposed regulations, the 180-day time limit is deemed no longer applicable in any situation.

Reservists who receive orders to report for military service or who are in military service are also entitled to the interest rate limitation under the SCRA. In the DCL, we clarified that a lender may confirm the eligibility of a reservist using the DMDC database and rely on the dates reflected in the system as the active duty service period for which the borrower is eligible for the reduced interest rate, using the reservist's order notification date as the start date of the service period.

The DCL also noted that there are two important limitations on the application of the SCRA's interest rate limitation to FFEL Program loans and Direct Loans. First, the SCRA applies only to loans taken out by a servicemember before the servicemember entered active duty military service. It does not apply to loans taken out after the borrower's active duty military service began. Second, because a consolidation loan is a new loan, a consolidation loan made after the borrower has started active duty military service is not eligible for benefits under the SCRA even if the underlying loans were taken out prior to the start of active duty service. For this purpose, a consolidation loan is considered eligible for benefits under the SCRA as long as the borrower applied for the consolidation loan before starting active duty military service.

In the DCL we assured FFEL Program lenders that, if they used the DMDC database to confirm a borrower's SCRA status and apply the interest rate limitation, and maintained the supporting information from the DMDC database, they would not be liable to the Department of Education for any financial liabilities if any information provided by the DMDC database is found to be incorrect.

The Department has used the DMDC database to begin, extend, or end, as appropriate, the use of the SCRA interest rate limit of six percent since August of 2014. The proposed

regulations would require FFEL Program loan holders and guaranty agencies to use the DMDC database in the same manner, so that FFEL and Direct Loan Program borrowers receive equitable treatment on all of their Federal student loans.

Discussions With Negotiators

Non-Federal negotiators expressed concern that a borrower's active duty service record may be missing from or inaccurately reflected in the DMDC database, particularly in cases where the borrower's name has changed. While the draft proposed regulations presented to the committee provided that a borrower could submit alternative evidence, including a copy of military orders or certification of the borrower's military service from an authorized official in connection with the borrower's request for another benefit on the loan, the non-Federal negotiators requested that a broader array of evidence be permitted for this purpose. While the Department declined to include letters or other attestations as acceptable evidence of active duty service, we agreed to develop a form that could be used by a servicemember seeking to provide evidence of his or her active duty service.

Some negotiators asked whether the proposed regulations would have an effect on a servicemember's private right of action under the SCRA. The Department affirmed that the proposed regulations are not intended to affect any private right of action that a borrower may have under the SCRA.

A non-Federal negotiator expressed concern that the reference to the SCRA interest rate limit of six percent might be interpreted by some loan holders to mean that a borrower's interest rate could be raised to six percent during periods of qualifying active duty military service. We assured the negotiator that holders and servicers of Federal student loans cannot raise the interest rate on a FFEL or Direct Loan Program loan to six percent if the statutory interest rate on the loan is lower than six percent.

Representatives of the FFEL Program community raised several points related to the applicability of current HEA and SCRA statutory provisions during the discussions. First, they asked whether the $600 annual ($50 monthly) payment rule in the HEA still applies. We confirmed that the minimum payment amount requirement in the HEA does apply. Second, they asked if the rule that requires a borrower to request SCRA benefits within 180 days of the servicemember's termination or release date from military service is no longer applicable when the benefit is being requested by the servicemember and not limited to when the servicer uses the DMDC database. We reiterated that the 180-day time limit is no longer applicable in any situation and not just when the servicer is using the database. Finally, they suggested that the effective date of August 14, 2008, be retained in the heading to § 682.202(a)(8) to ensure a universal understanding that SCRA benefits cannot precede that date. We declined to retain the historical date in the regulatory language, but agree that SCRA benefits cannot predate the effective date of the Higher Education Opportunity Act (HEOA) of August 14, 2008, which brought the SCRA benefit into the HEA.

Representatives of the FFEL Program community also submitted a series of hypothetical scenarios to clarify their understanding of how the SCRA interest rate limit would be applied under varying borrower and active duty service circumstances. The Department provided responses to each of these hypothetical scenarios and offered to continue to provide this kind of guidance and support when the loan holders encounter actual borrower circumstances where the appropriate application of the SCRA interest rate limit is not immediately clear.

Because the SCRA language includes references to ''other charges or fees applied to the loan'' that would be covered by the interest rate limit, the non-Federal negotiators requested that this preamble discussion include the specific charges associated with the Federal student loan programs that would be covered by SCRA. The possible additional charges that may be applied to Federal student loans are late fees and collection costs.

The non-Federal negotiators requested clarification on the meaning of ''active duty military service.'' Based on 50 U.S.C. App. § 511 and 10 U.S.C. 101 the Department determined that, for purposes of the SCRA interest rate limit, the term ''active duty'' means full-time duty in the active military service of the United States. It also includes full-time training duty, annual training duty, and attendance, while in active military service, at a school designated as a service school by law or by the Secretary of a branch of the military. Active military service for a member of a National Guard includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds. The non-Federal negotiators also requested clarification on the minimum term of active duty service to qualify for the SCRA interest rate limit. Under 10 U.S.C. 101 the term ''active duty for a period of more than 30 days'' means active duty under a call or order that does not specify a period of 30 days or less.

The non-Federal negotiators also requested that the preamble address the possibility that an endorser of a Stafford loan may seek the SCRA interest rate limit. The Department noted that there have not been endorsers on Stafford loans since 1992 and that it is very unlikely that one of these individuals will still be liable on the loan and will request the SCRA interest rate limit. However, if this unlikely event did occur, the Department would expect these endorsers to receive the same treatment as endorsers of PLUS loans.

A non-Federal negotiator asked why a borrower who submits a combination of evidence to establish his or her active duty service for the purpose of the SCRA interest rate limit should be provided the interest rate limit for the longest eligible period verified with the official electronic database, or alternative evidence of active duty service received by the loan holder, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date. We believe that, when the data are inconsistent, the most effective way to ensure the servicemember receives the benefit to which she or he is entitled is to use the earliest active duty start date and the latest active duty end date.

The committee also discussed how to address situations in which the lender learns, after the effective date of these regulations, that a borrower may have been eligible for the SCRA interest rate limit but the loan has been paid in full before the lender learned that the borrower was eligible. The Department and the loan servicers noted that they may not have current contact information for these borrowers and would not have a means of providing a refund. The proposed regulations do not specifically address this situation but do not preclude a lender from making a refund if it can.

Guaranty Agency Counseling for Repayment Transition (§ 682.405)

Statute: Under section 428F of the HEA, a borrower may rehabilitate a defaulted FFEL Program loan once by making nine on-time payments over a 10-month period. The payments are to be ''reasonable and affordable'' and are to be based on the borrower's ''total financial circumstances.'' Upon the

successful rehabilitation of the defaulted loan, all of the terms, conditions, and benefits of the loan, such as repayment plans like the Income-Based Repayment (IBR) Plan and deferments, are available to the borrower.

Current Regulations: Section 682.405 provides for a guaranty agency to, after entering into an agreement with a FFEL Program borrower to rehabilitate a defaulted loan, limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation. It does not specifically require or authorize a guaranty agency to counsel the borrower concerning the borrower's rights and responsibilities after the borrower has rehabilitated the defaulted loan.

Proposed Regulations: Proposed § 682.405(c) would require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into a rehabilitation agreement regarding the repayment options that will be available to the borrower after loan rehabilitation is completed.

Reasons: Some guaranty agencies have reportedly interpreted the existing regulatory language concerning the limitation of contact with the borrower to mean that they are not permitted to provide information to the borrower about repayment options after loan rehabilitation. This approach may have contributed to misunderstandings among some borrowers who have rehabilitated their defaulted FFEL Program loans. For instance, borrowers in such circumstances may not fully understand that, if they do not specifically choose another plan, the new holder of their loan will place the loan on the 10-year standard repayment plan, which generally results in a much higher payment than the payment the borrower made to rehabilitate the defaulted loan. Being placed on the 10-year standard repayment plan could be confusing for a borrower, and the payments may not be affordable.

During the negotiations, non-Federal negotiators representing FFEL Program guaranty agencies and servicers requested that they be permitted to engage in a practice equivalent to what occurs in the Direct Loan Program for borrowers who rehabilitate a defaulted Direct Loan. In the Direct Loan Program, borrowers who rehabilitate a defaulted Direct Loan are initially placed on an alternative repayment plan. The payment amount that the borrower made to rehabilitate the loan is maintained for three months under the alternative repayment plan while the Department's loan servicer provides information to the borrower about the availability of other repayment plans. If the borrower does not choose a new repayment plan during the three-month, post-rehabilitation period, the borrower's loan is removed from the alternative repayment plan and is placed on the standard repayment plan. In the FFEL Program, there is no designated ''alternative repayment plan,'' and there is no statutory authority for the Department to create a repayment plan in the FFEL Program that is comparable to the alternative repayment plan. Therefore, in these negotiations we initially proposed requiring FFEL Program lenders to, after purchasing a rehabilitated FFEL Program loan from the guaranty agency, place the borrower on the standard repayment plan and simultaneously provide the borrower with a non-capitalizing, mandatory administrative reduced-payment forbearance with a payment equal to the payment amount that the borrower paid to rehabilitate the FFEL Program loan. During the mandatory administrative reduced payment forbearance, the FFEL Program lender would counsel the borrower on repayment options and, as in the Direct Loan Program, attempt to get the borrower to choose a new repayment plan. If the borrower did not make a choice after a period of time, the forbearance would be removed. Non-Federal negotiators expressed concerns about using forbearance as a tool to achieve the desired outcome of maintaining the rehabilitation payment amount for a period of time while giving the borrower an opportunity to choose a repayment plan. The non-Federal negotiators representing FFEL Program participants expressed concerns that forbearances may carry negative connotations, and are also generally associated with the borrower not making any payments instead of a reduced payment. These negotiators also raised operational concerns about treating a borrower as delinquent on the loan if the borrower did not make the payment under a reduced-payment forbearance. They contended that most FFEL Program lenders do not treat a borrower as delinquent if the borrower does not make a payment under a reduced-payment forbearance agreement, and, accordingly, non-Federal negotiators representing the FFEL Program contended that our proposal would have required significant modifications to servicing systems. We indicated that current regulations already provide the authority for granting a reduced-payment forbearance under § 682.211(a) and a non-capitalizing administrative forbearance under § 682.211(f)(11) if it is necessary to provide additional time for a borrower to select a repayment plan option. Ultimately, the Department and non-Federal negotiators agreed that it would be preferable to adopt a less burdensome proposal. Therefore we are proposing to require guaranty agencies to provide the borrower with information on all of the repayment options available to the borrower after loan rehabilitation.

Loan Rehabilitation (§ 682.405)

Statute: Section 428F of the HEA was amended by the Bipartisan Budget Act of 2013 (Pub. L. 113–67) to, effective July 1, 2014, require a guaranty agency to assign an otherwise rehabilitated loan to the Secretary if it is unable to find a FFEL Program lender to purchase the loan, and to reduce the amount of collection costs that can be added to the balance of the loan upon rehabilitation from 18.5 percent to 16 percent.

Current Regulations: Current § 682.405 does not reflect the changes made to the HEA by the Bipartisan Budget Act of 2013.

Proposed Regulations: The proposed regulations would change § 682.405 to reduce the amount of collections costs that may be added to the balance of the loan upon rehabilitation from 18.5 percent to 16 percent of the unpaid principal and accrued interest at the time of the sale and to reflect that an otherwise rehabilitated FFEL Program loan must be assigned to the Secretary if the guaranty agency is unable to find a FFEL Program lender to purchase the loan.

Reasons: The FFEL Program loan rehabilitation regulations need to reflect the changes made to the HEA by the Bipartisan Budget Act of 2013.

Income-Contingent Repayment Plans

Background: On June 9, 2014, the President issued a Presidential Memorandum directing the Secretary of Education to propose regulations that would extend the benefits of the Pay As You Earn repayment plan to all eligible borrowers, regardless of when they borrowed, and that would include new features to target the plan to struggling borrowers.

To carry out the objective of the Presidential Memorandum, the Secretary initiated this rulemaking process to propose the creation of the new REPAYE plan as a type of Income-Contingent Repayment (ICR) plan in the Direct Loan Program under section 455(d)(1)(D) of the HEA. The proposed REPAYE plan would have many of the

same terms and conditions as the Pay As You Earn repayment plan. Terms and conditions of the REPAYE plan that differ from the Pay As You Earn repayment plan are explained below.

Revised Pay As You Earn Repayment Plan (§§ 685.208, 685.209, 685.219, and 685.221)

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer Direct Loan borrowers (except parent PLUS borrowers) an ICR plan with varying annual repayment amounts based on the income of the borrower, for a period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e)(1) of the HEA authorizes the Secretary to establish ICR plan repayment schedules through regulations.

Current Regulations: Section 685.209 establishes the Pay As You Earn repayment plan and the ICR plan.

Proposed Regulations: The proposed regulations would add a new § 685.209(c), establishing the REPAYE plan as a third ICR plan under which a borrower's monthly payment amount is determined based on the borrower's adjusted gross income (AGI) and family size.

Reasons: The proposal to establish an income-contingent repayment plan available to all student Direct Loan borrowers is consistent with the President's Memorandum to the Secretary.

The non-Federal negotiators supported expanding the availability of the benefits of the Pay As You Earn repayment plan to all eligible Direct Loan borrowers regardless of when they borrowed.

However, the non-Federal negotiators initially did not support creating a third income-contingent repayment plan. They pointed out that, in addition to the two current income-contingent repayment plans, the IBR plan is also available for many borrowers. Instead of adding a new plan, these negotiators recommended modifications to the Pay As You Earn repayment plan to make it available to more borrowers, while allowing borrowers who are currently repaying under that plan to continue doing so under the existing Pay As You Earn repayment plan terms and conditions. They believed that this approach would be simpler for the Department and its loan servicers to administer, and simpler for schools to explain to borrowers.

The Department stated that it was committed to adding the REPAYE plan to the existing choices of income-driven repayment plans and believed that the current Pay As You Earn repayment plan should be retained until proposed reforms can be implemented that would establish a single income-driven repayment plan targeted to struggling borrowers. While we appreciate the concerns raised by the negotiators, we do not believe that adding a third plan will significantly increase burden for servicers or confuse borrowers.

Access to the REPAYE Plan

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to promulgate regulations governing access of Direct Loan borrowers (except parent PLUS borrowers) to an income-contingent repayment plan.

Current Regulations: Under § 685.209(a), the Pay As You Earn repayment plan is limited to ''eligible new borrowers.'' ''Eligible new borrower'' is defined in § 685.209(a)(1)(iii) as an individual who has no outstanding balance on a Direct Loan Program Loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007, and who receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan on or after October 1, 2011.

Under § 685.209(a)(2), an eligible new borrower may select the Pay As You Earn repayment plan only if he or she has a PFH, as defined in § 685.209(a)(1)(v).

Proposed Regulations: Proposed § 685.209(c)(2)(i) would allow a student Direct Loan borrower to select the REPAYE plan regardless of when the borrower received the Direct Loan, and regardless of whether the borrower has a PFH.

Reasons: Consistent with the President's Memorandum to the Secretary, the REPAYE plan would be available to any Direct Loan student borrower, regardless of when the borrower obtained his or her loans. The non-Federal negotiators were overwhelmingly supportive of not establishing any limitation on eligibility for the REPAYE plan based on when the borrower received his or her Direct Loans.

Initially, the Department proposed retaining PFH as an eligibility criterion for borrowers selecting the REPAYE plan. The Department's view was that the PFH eligibility criterion would help meet the President's objective of targeting the benefits of the new repayment plan to struggling borrowers. The non-Federal negotiators argued that other features of the REPAYE plan, such as the absence of a limit on the borrower's monthly payment amount, would effectively target the benefits of the REPAYE plan to struggling borrowers. The non-Federal negotiators thought that establishing PFH as an entry requirement for the REPAYE plan would limit the number of borrowers who could repay their loans through the REPAYE plan, and might exclude some of the struggling borrowers that the REPAYE plan is intended to benefit, particularly some middle-income borrowers.

Some non-Federal negotiators suggested various alternative approaches to meet the President's goal, such as only counting years when a borrower is experiencing a PFH towards the 20- or 25-year forgiveness periods.

We found the arguments of the non-Federal negotiators persuasive, and agreed to withdraw our proposal to establish PFH as an eligibility criterion for the REPAYE plan.

Some non-Federal negotiators recommended expanding eligibility for the REPAYE plan to parent Direct PLUS Loan borrowers. However, the Department noted that the statutory authority governing all of the income-contingent repayment plans specifically excludes parent PLUS borrowers from repaying their PLUS loans under such plans.

Treatment of Married Borrowers Under the REPAYE Plan Statute: Section 455(e)(2) of the HEA requires the Secretary to establish income-contingent repayment amounts based on the AGI of the borrower and, if applicable, the borrower's spouse. Section 455(e)(4) of the HEA authorizes the Secretary to establish income-contingent repayment schedules through regulations.

Current Regulations: Under § 685.209(a)(2), the monthly payment for a borrower in the Pay As You Earn repayment plan is no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. Under § 685.209(a)(1)(i), for a married borrower filing separately, AGI includes only the borrower's income.

Proposed Regulations: Under proposed § 685.209(c)(2), the monthly payment for a borrower in the REPAYE plan would generally be no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12. The monthly payment amount may be adjusted, as discussed under the *Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income* section in this preamble.

Proposed § 685.209(c)(1)(i) would define the term ''adjusted gross income'' to mean the borrower's adjusted gross income as reported to the IRS. For a married borrower who files a joint Federal tax return, AGI would include both the borrower's and spouse's income and would be used to calculate the monthly payment amount. For a married borrower who files a Federal tax return separately from his or her spouse, the AGI for each spouse would be combined to calculate the monthly payment amount. For a married borrower who files a tax return separately from his or her spouse, the AGI of the borrower's spouse would not be required however if the borrower certifies that the borrower is separated from his or her spouse or is unable to reasonably access the income information of his or her spouse. The borrower would provide the appropriate certification on a form approved by the Secretary.

The definition of ''family size'' in proposed § 685.209(c)(1)(iii) would be consistent with the definition of that term in the Pay As You Earn repayment plan regulations, with one exception. Family size would not include a married borrower's spouse if the borrower filed a Federal income tax return separately from his or her spouse and the borrower is separated from his or her spouse, or if the borrower filed a separate Federal income tax return from his or her spouse and the borrower is unable to reasonably access the spouse's income information.

Reasons: In the Pay As You Earn repayment plan, the IBR plan, and the ICR plan, the combined AGI for married borrowers is used if the couple files a joint Federal tax return. However, if the couple files separately, only the borrower's AGI is used in the payment calculation. The REPAYE plan would treat married borrowers filing separately differently. We believe that the proposal to combine the AGI of the borrower and the spouse when they are filing separately, except in certain circumstances, would provide more equitable treatment for borrowers. In the current IDR plans, whether a spouse's income is taken into consideration when determining the borrower's payment amount is dependent on the tax filing decisions of the married couple. We believe that, for married borrowers, it is more equitable to count the spouse's AGI even when the borrower and spouse file separate tax returns, except under the circumstances described earlier under *Proposed Regulations.*

The non-Federal negotiators generally agreed with this treatment of married borrowers. However, they raised serious concerns about married borrowers who would be unable to obtain the AGI of their spouses. They raised the issue of borrowers who are separated from their spouses—either legally separated or simply living apart. The non-Federal negotiators argued that the requirement for a married borrower filing separately to provide his or her spouse's AGI could prevent the borrower from participating in the REPAYE plan due to circumstances beyond the borrower's control. For instance, they noted that borrowers who are victims of domestic abuse could be forced to attempt to obtain the AGI information from their abuser.

The Department agreed that exceptions should be made for borrowers who are separated from their spouses, or who are unable to obtain their spouse's AGI for other reasons. We agreed to include a certification on the Income-Driven Repayment Plan Request application form that will allow borrowers to certify that they meet the conditions for this exception. This process would be modeled after the Department's instructions to individuals completing the Free Application for Federal Student Aid.

The non-Federal negotiators also argued that the exception to providing a spouse's AGI in cases of separated or abused spouses should be reflected in the definition of ''family size.'' The Department agreed with this position. If a borrower certifies on the Income-Driven Repayment Plan Request application that the borrower is separated from his or her spouse or is unable to reasonably obtain the spouse's AGI information, the spouse would not be counted as part of the borrower's family size for the REPAYE plan.

Absence of a Cap on Monthly Payment Amounts Under the REPAYE Plan

Statute: The HEA does not address capping the monthly payment amount for a loan repaid under an income-contingent repayment plan.

Current Regulations: Under § 685.209(a)(4)(i)(A), if a borrower making payments under the Pay As You Earn repayment plan no longer has a PFH, the Department recalculates the borrower's monthly payment amount. The maximum monthly payment amount the borrower is required to repay as a result of this recalculation may not exceed the amount the borrower would have paid under the standard repayment plan based on a 10-year repayment period using the amount of the borrower's eligible loans outstanding at the time the borrower began repayment under the Pay As You Earn repayment plan.

Proposed Regulations: Under proposed § 685.209(c)(2)(i)(A), the calculated monthly payment amount under the REPAYE plan would not be capped at the amount the borrower would have paid under a standard repayment plan based on a 10-year repayment period.

Reasons: The absence of a standard repayment plan cap for payments under the REPAYE plan would serve the President's goal of ensuring that high-income, high-balance Direct Loan borrowers pay an equitable share of their earnings as their income rises. Non-Federal negotiators supported the proposal not to have a cap on the calculated monthly payment amount under the REPAYE plan, to better target the benefits of the REPAYE plan to struggling borrowers.

Accrued Interest Charged Under the REPAYE Plan

Statute: The HEA does not address interest charges under an income-contingent repayment plan.

Current Regulations: Under § 685.209(a)(2)(iii), if a borrower's monthly payment amount under the Pay As You Earn repayment plan is not sufficient to pay the accrued interest on the borrower's Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Department does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the Pay As You Earn repayment plan.

Proposed Regulations: Under proposed § 685.209(c)(2)(iii)(A), if a borrower's monthly payment amount under the REPAYE plan is not sufficient to pay the accrued interest on the borrower's loan, the Department would not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan under the REPAYE plan. Following this three-year period, the Department would charge the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

Under proposed § 685.209(c)(2)(iii)(C), the three-year period would not include any period during which the borrower receives an economic hardship deferment. The three-year period would include any prior period of repayment under the IBR

plan or the Pay As You Earn repayment plan, and, for a Direct Consolidation Loan, would include any period in which the underlying loans were repaid under the IBR plan or the Pay As You Earn repayment plan.

Under proposed § 685.209(c)(2)(iii)(B), if a borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's Direct Unsubsidized Loan, Direct PLUS Loan, or on the unsubsidized portion of a Direct Consolidation Loan, the Department would charge the borrower 50 percent of the remaining accrued interest. In addition, the Department would charge the borrower 50 percent of the remaining accrued interest on a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest under § 685.200(f)(3).

Reasons: The proposal to limit the amount of interest charged to a borrower in the REPAYE plan during periods when the calculated monthly payment is not sufficient to cover accrued interest is consistent with the goals of the President's Memorandum to the Secretary.

The non-Federal negotiators supported this proposal, but questioned how subsidized loans that have lost their interest subsidy due to the borrower exceeding the 150 percent Direct Subsidized Loan Limits would be handled. The Department determined that, in the case of a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for paying the interest, the Department would charge the borrower 50 percent of the remaining accrued interest that accrues after the effective date of the loss of interest subsidy.

Non-Federal negotiators also recommended allowing the period when interest is not charged on Direct Subsidized loans or the subsidized portion of a Consolidation Loan to be for any three years rather than for three consecutive years from the start date of the repayment period. Non-Federal negotiators also recommended decreasing the amount of interest that would be charged to a borrower after a three-year period from 50 percent of the remaining accrued interest to 10 percent of the remaining accrued interest. However, the Department determined that this proposal would significantly increase costs to the taxpayers.

Interest Capitalization Under the REPAYE Plan

Statute: Section 455(e)(5) of the HEA authorizes the Secretary to promulgate regulations limiting the amount of interest that may be capitalized on loans repaid under an income-contingent repayment plan, and specifying the timing of capitalization under the plan.

Current Regulations: Under § 685.209(a)(2)(iv)(A), accrued interest is capitalized for a borrower in the Pay As You Earn repayment plan when the borrower is determined to no longer have a PFH, or at the time the borrower chooses to leave the Pay As You Earn repayment plan.

Proposed Regulations: Under proposed § 685.209(c)(2)(iv), in the REPAYE plan, accrued interest would be capitalized when the Secretary determines that a borrower does not have a PFH or at the time a borrower leaves the REPAYE plan. The amount of accrued interest capitalized when a borrower is determined to not have a PFH would be limited to 10 percent of the original principal balance at the time the borrower entered repayment under the REPAYE plan. After the amount of accrued interest reaches this limit, interest would continue to accrue but would not be capitalized while the borrower remains on the REPAYE plan.

Proposed § 685.209(c)(1)(iv) would define the term ''partial financial hardship'' to mean a circumstance in which the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's AGI or, if applicable, the AGI of the borrower and the borrower's spouse, and 150 percent of the poverty guideline for the borrower's family size.

Reasons: Although the Department is not proposing to include PFH as an eligibility criterion for the REPAYE plan, PFH would be used for interest capitalization purposes. Under the proposed regulations, the Department would determine each year if the borrower has a PFH. If a borrower who had a PFH during one year does not have a PFH the following year, accrued interest would be capitalized in accordance with § 685.209(c)(2)(iv).

The non-Federal negotiators supported the proposal to limit the amount of interest that may be capitalized under the REPAYE plan. Some non-Federal negotiators recommended that the Department eliminate interest capitalization entirely. However, this proposal would significantly increase the costs to the taxpayer of the REPAYE plan. In addition, applying the interest capitalization limitation only to borrowers with a PFH would help to target the benefits of the REPAYE plan to the neediest borrowers.

Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income

Statute: The HEA does not address the treatment of borrowers repaying under an income-contingent repayment plan who do not provide the annual income information required by the Secretary to determine the borrower's monthly payment amount.

Current Regulations: Under § 685.209(a)(5)(vii), if a borrower who is repaying under the Pay As You Earn repayment plan remains on the plan for a subsequent year, but the Secretary does not receive the income information needed to calculate the borrower's new monthly payment amount within 10 days of the annual deadline provided to the borrower in the notice described in § 685.209(a)(5)(iii), the Secretary recalculates the borrower's monthly payment amount and requires the borrower to pay the monthly amount the borrower would have paid under a standard repayment plan with a 10-year repayment period, based on the borrower's loan balance as of the time the borrower began repayment under the Pay As You Earn repayment plan. However, the Secretary does not recalculate the borrower's monthly payment amount if the Secretary receives the required income documentation more than 10 days after the annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual repayment period as described in § 685.209(a)(5)(ii)(A). If the Secretary recalculates the borrower's monthly payment amount, the repayment period based on that amount may exceed 10 years.

Current § 685.209(a)(5)(ix) provides that if the Secretary receives the required income documentation more than 10 days after the specified annual deadline and the borrower's payment amount is recalculated as described earlier, the Secretary uses the income documentation to determine the borrower's new Pay As You Earn repayment plan monthly payment amount. If the new payment amount is $0.00 or is less than the borrower's

previously calculated income-based payment amount, the Secretary applies a forbearance with respect to any payments that are overdue or that would be overdue at the time the new Pay As You Earn repayment plan monthly payment amount is determined. Interest that accrues during the portion of the forbearance period that occurred prior to the end of the borrower's prior annual payment period is not capitalized.

Proposed Regulations: Under proposed § 685.209(c)(4)(vi), if a borrower who is repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the income documentation needed to determine the borrower's new monthly payment amount within 10 days of the specified annual deadline provided to the borrower in the notice described in proposed § 685.209(c)(4)(iii), the Secretary would remove the borrower from the REPAYE plan and place the borrower on an alternative repayment plan. Under this alternative repayment plan, the borrower's required monthly payment would be the amount necessary to repay the borrower's loan in full within 10 years from the date the borrower begins repayment under the alternative repayment plan, or by the end of the 20-year or 25-year period described in proposed § 685.209(c)(5)(i) and (ii), whichever is earlier. The Secretary would not take these actions if the Secretary receives the required income documentation more than 10 days after the annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual repayment period as described in § 685.209(c)(4)(ii)(A).

Under proposed § 685.209(c)(4)(vii)(A) through (C), if the Secretary places the borrower on an alternative repayment plan, the Secretary would send the borrower a written notice informing the borrower that he or she has been placed on an alternative repayment plan, that the borrower's monthly payment has been recalculated in accordance with proposed § 685.209(c)(4)(vi), and that the borrower may change to a different repayment plan in accordance with § 685.210(b). The notice would also explain the conditions, as described in proposed § 685.209(c)(4)(vii)(D) through (G), under which a borrower who has been removed from the REPAYE plan because the borrower did not provide required income documentation within 10 days of the specified annual deadline may return to the REPAYE plan.

Under proposed 685.209(c)(vii)(D), a borrower who has been removed from the REPAYE plan because the borrower did not provide income documentation to the Secretary in accordance with proposed § 685.209(c)(4)(vi), or a borrower who chose to leave the REPAYE plan and repay under a different repayment plan in accordance with proposed § 685.209(c)(2)(vi), may return to the REPAYE plan if he or she provides the income documentation necessary for the Secretary to calculate both the borrower's new REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan.

Proposed § 685.209(c)(4)(vii)(E) would provide that if a borrower qualifies to return to the REPAYE plan by submitting the income documentation described in proposed § 685.209(c)(vii)(D), and the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan are less than the total amount of the payments the borrower would have been required to make under the REPAYE plan during that period, the Secretary would adjust the borrower's REPAYE plan monthly payment to ensure that the difference between the two amounts is paid in full by the end of the 20-year or 25-year period described in proposed § 685.209(c)(5)(i) and (ii).

Under proposed § 685.209(c)(4)(vii)(F), if a borrower who was removed from the REPAYE plan and placed on the alternative repayment plan described in proposed § 685.209(c)(4)(vi) later returns to the REPAYE plan or changes to the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), or the income-based repayment plan under § 685.221, any payments the borrower made under the alternative repayment plan will count toward loan forgiveness under the REPAYE plan or the other repayment plans under § 685.209(a), § 685.209(b), or § 685.221.

Finally, proposed § 685.209(c)(4)(vii)(G) would provide that any payments made under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) would not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program under § 685.219. To reflect this provision, the proposed regulations would also make a conforming change in § 685.219(c)(1)(iv)(D) to provide that payments made under an alternative repayment plan do not count toward the required 120 monthly payments for public service loan forgiveness.

Reasons: In the absence of a process that allows borrowers to provide consent to access their income information for multiple years, the proposed approach for handling borrowers who do not provide required income documentation by the annual deadline serves two important purposes. First, the proposed regulations should provide an incentive for borrowers to comply with the annual income documentation requirement in a timely manner. At the same time, allowing payments made under the alternative repayment plan to count toward REPAYE plan loan forgiveness if the borrower later returns to the REPAYE plan ensures that borrowers who do not submit income documentation by the annual deadline but later correct the problem are not unduly penalized.

Second, the proposed approach provides a disincentive for borrowers who might intentionally withhold updated income information when there is a significant increase in their income so as to avoid a corresponding increase in their calculated monthly payment amount. The proposed regulations would ensure that, if such borrowers wish to return to the REPAYE plan, they must repay the difference between the amount they were required to pay during the time they were in repayment under the alternative repayment plan or any other repayment plan and the amount they would have been required to pay during that same period under the REPAYE plan if they had provided the required updated income documentation. This is consistent with the Department's goal of targeting the REPAYE plan to the neediest borrowers by ensuring that the required monthly payment amount for a borrower whose income increases over time will always be adjusted upward as the borrower's income increases.

During the negotiations, the Department initially presented this issue as a topic for discussion and asked the non-Federal negotiators to suggest possible approaches. The non-Federal negotiators suggested various options for handling borrowers who do not provide required income documentation, including: Setting the borrower's payment at a fixed payment amount that would ensure repayment of the loan in full over the remaining balance of the borrower's 20-year or 25-year REPAYE plan repayment term; increasing the borrower's payment amount based on a percentage linked to the remaining amount of time under the

20-year or 25-year repayment term; increasing the payment amount based on projected increases in the borrower's income; and requiring the borrower to pay an amount that is no less than the standard plan payment amount. Other recommendations from the non-Federal negotiators included extending the period during which a borrower can submit income documentation from 10 days after the annual deadline to 30 to 60 days after the deadline, and establishing an appeal process for borrowers who miss the income submission deadline.

In response to these recommendations, the Department noted that some of the suggested approaches would effectively establish a cap on the maximum amount a borrower would be required to pay, similar to the provision of the Pay As You Earn repayment plan that limits the monthly amount a borrower is required to pay to no more than the amount the borrower would be required to pay under the 10-year standard repayment plan. Such an approach would be contrary to the goal of targeting the REPAYE plan to the neediest borrowers by ensuring that the calculated monthly payment amount is always a percentage of the borrower's income, so that borrowers with higher earnings will have a correspondingly higher monthly payment amount.

The Department also declined to consider the recommendations to extend the time after the annual deadline during which a borrower may submit income documentation, or establish an appeals process for borrowers who do not submit income documentation by the deadline. The Department noted that the proposed regulations related to the annual deadline for submitting income documentation are the same as the corresponding regulations for the Pay As You Earn repayment plan that were developed through negotiated rulemaking after extensive discussion. Because those regulations have been in effect for less than two years, the Department did not believe there was sufficient evidence to conclude that the existing timeframes for borrowers to submit income documentation should be modified. In addition, the corresponding Pay As You Earn repayment plan regulations do not provide an appeal process for borrowers who miss the annual deadline, and the Department did not believe that establishing an appeal process for the REPAYE plan was warranted.

However, the Department noted that we are conducting a pilot program to determine if there may be more effective ways to communicate the annual income documentation requirement to borrowers.

At the third negotiating session the Department presented the proposed regulations for handling borrowers who do not provide the required annual income documentation. The Department also explained to the non-Federal negotiators an alternative approach that the Department had initially considered and asked for comments on the two approaches. Under the alternative approach, a borrower who did not provide the required income documentation within 10 days of the specified annual deadline would be removed from the REPAYE plan and placed on an alternative repayment plan under which the required monthly payment amount would be the amount required to repay the borrower's remaining loan balance within 10 years from the date the borrower began repayment under the alternative repayment plan. The borrower could return to the REPAYE plan if he or she provided the required income documentation within 90 days of having been placed on the alternative repayment plan, or could choose a different repayment plan during that period. If the borrower did not provide the required income documentation or change to a different repayment plan within the 90-day period, the borrower would be removed from the alternative repayment plan and placed on the standard repayment plan. During the discussion, the non-Federal negotiators generally expressed the view that the Department's final proposal for handling borrowers who do not provide income documentation was more fair to borrowers than the alternative approach that the Department had initially considered.

One non-Federal negotiator asked why the proposed REPAYE plan regulations did not include a forbearance provision comparable to the provision in § 685.209(a)(5)(ix), which provides that, in the Pay As You Earn repayment plan, the Department applies a forbearance to cover any payments that are past due or that would be overdue when the Secretary receives income documentation from the borrower more than 10 days after the specified annual deadline, and the new calculated payment amount is $0.00 or is less than the borrower's previously calculated Pay As You Earn repayment plan payment amount. The Department explained that a comparable provision is not required in the proposed regulations for the REPAYE plan, because the administrative forbearance provision in § 685.205(b) would cover this situation. Consistent with the FFEL Program administrative forbearance provision in § 682.211(f)(14), the Secretary would grant forbearance for a period of delinquency that exists at the time a borrower makes a change to a different repayment plan. The Department noted that under the Pay As You Earn repayment plan, a borrower who does not provide income documentation by the annual deadline is not actually removed from the Pay As You Earn repayment plan, and would not be covered by the administrative forbearance provision in § 685.205(b). Therefore, a special forbearance provision was added to the Pay As You Earn repayment plan regulations. In contrast, the proposed REPAYE plan regulations would remove a borrower from the plan and place the borrower on an alternative repayment plan if he or she fails to provide the required income documentation by the specified annual deadline. If the borrower later meets the requirements for returning to the REPAYE plan, the Secretary would grant an administrative forbearance under § 685.205(b) to cover any payments that are past due or that would be overdue at the time the borrower changes back to the REPAYE plan.

Loan Forgiveness Under the REPAYE Plan

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer an income-contingent repayment plan with varying annual repayment amounts based on the borrower's income, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years.

Current Regulations: Under § 685.209(a)(6), a borrower repaying under the Pay As You Earn repayment plan may qualify for forgiveness of any remaining loan balance after 20 years of qualifying monthly payments and periods of economic hardship deferment. Qualifying monthly payments include payments made under the Pay As You Earn repayment plan, the income-contingent repayment plan under § 685.209(b), the income-based repayment plan under § 685.221, or the standard repayment plan with a 10-year repayment period under § 685.208(b), as well as payments made under any other Direct Loan repayment plan that were not less than the amount required under the standard repayment plan with a 10-year repayment period.

Proposed Regulations: Under proposed § 685.209(c)(5), a borrower repaying under the REPAYE plan would qualify for forgiveness of any remaining

loan balance after either 20 years or 25 years of qualifying monthly payments.

Under proposed § 685.209(c)(5)(ii)(A), a borrower would qualify for forgiveness after 20 years if the loans being repaid under the REPAYE plan include only loans the borrower received to pay for undergraduate study or a consolidation loan that repaid only loans the borrower received to pay for undergraduate study.

Under proposed § 685.209(c)(5)(ii)(B), a borrower would qualify for forgiveness after 25 years if the loans being repaid under the REPAYE plan include a loan the borrower received to pay for graduate or professional study or a consolidation loan that repaid a loan received to pay for graduate or professional study.

Proposed § 685.209(c)(5)(iv) would define a ''qualifying monthly payment'' as any payment made under the REPAYE plan, the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), the income-based repayment plan under § 685.221, or the standard repayment plan with a 10-year repayment period under § 685.208(b), or a payment made under any other Direct Loan repayment plan if the amount of the payment was not less than the amount required under the standard repayment plan with a 10-year repayment period. The proposed definition of ''qualifying monthly payment'' would also include any payment made by a borrower under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) and (vii) before the borrower changed to one of the income-contingent repayment plans under § 685.209 or the income-based repayment plan under § 685.221, or any month during which the borrower was not required to make a payment due to receiving an economic hardship deferment.

The proposed regulations would also make conforming changes to the regulations for the Pay As You Earn repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), and the income-based repayment plan under § 685.221, to provide that a qualifying monthly payment for purposes of loan forgiveness under those plans would include a monthly payment made under the REPAYE plan or a monthly payment made by a borrower under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) and (vii) before the borrower changed to one of the repayment plans under § 685.209 or § 685.221.

Reasons: The Department initially proposed that a borrower would qualify for forgiveness after 20 years if the borrower's total outstanding balance on loans being repaid under the REPAYE plan was $57,500 or less at the time the borrower initially began repayment under the plan, and would qualify for forgiveness after 25 years if the total outstanding balance on loans being repaid under the REPAYE plan was more than $57,500 at the time the borrower initially began repayment under the plan. The rationale for this approach was that borrowers with higher loan balances should be expected to repay over a longer period of time before receiving forgiveness of any remaining loan balance. The $57,500 amount is the statutory aggregate loan limit for an independent undergraduate student.

The non-Federal negotiators strongly objected to the Department's initial approach to this issue. One of the negotiators' major concerns was that basing the determination of the 20-year or 25-year period on a specific dollar amount of outstanding loan would result in a ''cliff effect,'' whereby a borrower who had as little as $1.00 in outstanding loan debt over the specified amount would have to repay for an additional five years before qualifying for loan forgiveness. Some non-Federal negotiators also suggested that the Department's proposed approach would be complicated to explain to borrowers, and that it would be difficult for borrowers to know at the time they were taking out their loans whether they would have to repay for 20 years or 25 years before qualifying for forgiveness.

The non-Federal negotiators also noted that, under the Department's proposal, it was unclear what would happen if at some point in the future the $57,500 independent undergraduate aggregate loan limit was increased. They noted further that the original proposal did not make it clear how the repayment period would be determined for a borrower who initially entered repayment under the REPAYE plan with less than $57,500 in outstanding loan debt, but later returned to school and received additional loans that increased the borrower's loan debt to an amount in excess of $57,500, nor did it clarify how the repayment period would be determined for a borrower who had previously begun repaying loans under the REPAYE plan and later consolidated those loans.

Some non-Federal negotiators suggested other approaches for determining the repayment period, such as increasing the length of the repayment period in one-month increments for each $1,000 in loan debt beyond a specified amount, or providing a 20-year repayment period for all loans received for undergraduate study and a 25-year period for all loans received for graduate or professional study.

The Department considered the non-Federal negotiators' proposal to establish a 20-year repayment period for all loans received for undergraduate study and a 25-year period for all loans received for graduate or professional study, but determined that the costs to the taxpayers would be unacceptably high. Some non-Federal negotiators then proposed a 20-year repayment period if all of a borrower's loans being repaid under the REPAYE plan were obtained for undergraduate study, and a 25-year repayment period if one or more of a borrower's loans was obtained for graduate or professional study. The non-Federal negotiators believed that the benefits of the suggested alternative in terms of simplicity and avoiding the potential ''cliff effect'' associated with the Department's original proposal would outweigh any potential disadvantages. Although some of the other non-Federal negotiators had reservations about setting the repayment period at 25 years for any borrower with at least one loan received for graduate or professional study, and expressed concern that this may discourage some students from pursuing graduate degrees, all of the non-Federal negotiators eventually supported this approach. Some negotiators said that they would support the proposal to set the repayment period at 25 years for borrowers who obtained one or more loans for graduate or professional study because graduate and professional students have the option of pursuing public service loan forgiveness.

A non-Federal negotiator asked if a borrower who received loans for both undergraduate and graduate study could qualify for forgiveness after 20 years by repaying only the undergraduate loans under the REPAYE plan and repaying the graduate loans under a different plan, such as the Pay As You Earn repayment plan. The Department noted that the proposed regulations for the REPAYE plan do not change the current regulation 34 CFR 685.208(a)(4) that requires all Direct Loans obtained by a borrower to be repaid together under the same repayment plan, except that a borrower with a parent Direct PLUS Loan or Direct Consolidation Loan that is not eligible for repayment under an income-driven repayment plan may repay the ineligible loan separately from other loans obtained by the borrower.

After carefully considering the alternative suggested by the non-Federal negotiators, the Department agreed to incorporate this approach in the proposed regulations, with the addition

of language to clarify the treatment of borrowers with consolidation loans, as explained earlier under *Proposed Regulations.* In response to a question from the non-Federal negotiators, the Department also clarified that Direct Loans received by a borrower for preparatory coursework or teacher certification coursework under 34 CFR 685.203(a)(6) or (7) would be considered loans obtained for undergraduate study. The approach suggested by the non-Federal negotiators balances our interest in having borrowers with higher loan balances make payments over a longer period of time before receiving loan forgiveness with our interest in having a forgiveness provision that is easy for borrowers to understand.

Lump Sum Payments Made Under Department of Defense Student Loan Repayment Programs for the Purpose of Public Service Loan Forgiveness

Statute: Section 455(m) of the HEA provides the statutory framework for the Public Service Loan Forgiveness Program, including the requirement that a borrower seeking loan forgiveness under this section must make 120 monthly payments and have been in public service during that 120-month period. The statute provides that after the conclusion of the 120-month period, the Secretary of Education will cancel the obligation to repay the balance of principal and interest due as of the time of the cancellation.

Current Regulations: Section 685.219(c)(2) of the current regulations provides that, for purposes of the Public Service Loan Forgiveness Program, lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service are applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.

Proposed Regulations: The proposed regulations would amend § 685.219(c)(1)(iii), (c)(2), and (c)(3) to provide the same treatment to lump sum payments made on behalf of a borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, and 2174, or any other student loan repayment programs administered by the Department of Defense.

Reasons: A non-Federal negotiator proposed this change to provide equity to those borrowers who are seeking public service loan forgiveness and whose student loan payments are being made directly through lump sum payments by the Department of Defense. The Department agrees that providing equitable treatment to such payments is an important goal.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because the availability of the REPAYE plan is estimated to cost approximately $15.3 billion over loan cohorts from 1994 to 2025. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

This regulatory impact analysis is divided into six sections. The ''Need for Regulatory Action'' section discusses why amending the current regulations is necessary.

The ''Summary of Proposed Regulations'' briefly describes the changes the Department is proposing in these regulations.

The ''Discussion of Costs and Benefits'' section considers the cost and

benefit implications of these regulations for student loan borrowers, the public, and the Federal Government.

Under ''Net Budget Impacts,'' the Department presents its estimate that the proposed regulations would have a significant net budget impact on the Federal Government of approximately $15.3 billion, $8.3 billion of which relates to existing loan cohorts from 1994 to 2015 and $7 billion relates to loan cohorts from 2016 to 2025 (loans that will be made in the future).

In ''Alternatives Considered,'' we describe other approaches the Department considered for key provisions of the proposed regulations, including basing the determination of whether a borrower could qualify for loan forgiveness after 20 or 25 years on the amount borrowed, the treatment of married borrowers who file taxes separately, and the appropriate handling of borrowers who do not certify their income as required to remain in the REPAYE plan.

Finally, the ''Regulatory Flexibility Act Certification'' considers the effect of the proposed regulations on small entities.

Need for Regulatory Action

The proposed regulations address several topics related to the administration title IV, HEA student aid programs and benefits and options for borrowers. The changes to the PRI appeals process to allow more timely challenges and appeals would provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. This increased certainty could encourage some institutions, especially community colleges with low borrowing rates, to continue participating in the title IV loan programs.

In the proposed regulations, the Department seeks to reduce the burden on active duty servicemembers and help ensure that those eligible for an interest rate reduction receive it.

The Department has also developed these proposed regulations in response to a Presidential Memorandum released on June 9, 2014, for the Secretary of Treasury and the Secretary of Education with the subject line, ''Helping Struggling Federal Student Loan Borrowers Manage Their Debt.'' [1]

In the memorandum, the President discussed the importance of a college education and the Administration's efforts to maintain affordability of a college education and expressed concern that many borrowers were unable to cap their student loan payments at 10 percent of their discretionary income under the current regulations.

The President also instructed the Secretary to propose regulations that would allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income. The Secretary was instructed to target this option towards borrowers who would otherwise struggle to repay their loans.

The Department is responsible for administration of the Federal student loan programs authorized by title IV of the HEA, and as a result, periodically reviews and revises program regulations to ensure that the programs operate efficiently and in line with the statutory rules set by Congress.

In 2012, the Department of Education established a new income-contingent repayment plan called the Pay As You Earn repayment plan. The Department developed this plan in response to a growing concern about the growth of student loan debt and potential long-term economic consequences for student borrowers and the country. As a result, under the Pay As You Earn plan, loan payments are limited to 10 percent of the borrower's discretionary income and any remaining balance is forgiven after 20 years of qualifying payments for borrowers who first borrowed on or after October 1, 2007, with a loan disbursement made on or after October 1, 2011.

However, while the original PAYE repayment plan offered relief to qualifying recent borrowers, it did not help the millions of existing borrowers with student loan debt. As the concerns about American student loan debt burdens continue to build, the Department seeks to offer payment relief to a larger swath of borrowers than is currently possible under the PAYE repayment plan. To achieve that goal, the Department has proposed the REPAYE plan. This plan will offer borrowers many of the same benefits as the original PAYE repayment plan, regardless of when they originally borrowed.

As noted in the Consumer Finance Protection Bureau's 2013 report, ''Public Service & Student Debt: Analysis of Existing Benefits and Options for Public Service Organizations,'' the current process of applying ''lump sum payments'' made through student loan repayment programs administered by the Department of Defense can be detrimental to the overall value of the eligible borrower's benefits.[2] When such payments are counted as one single payment in lieu of the borrower being given credit for the equivalent number of monthly payments covered by the amount, it does not count toward the 120 qualifying payments required for public service loan forgiveness.

In these proposed regulations, the Department would count lump sum payments made by the Department of Defense under certain loan repayment programs towards public service loan forgiveness.

Summary of Proposed Regulations

The Department proposes to establish a new IDR plan that would be available to all borrowers; allow for PRI challenges or appeals to CDRs between 30 and 40 percent within the three most recent fiscal years; reduce the burden on active duty servicemembers who are entitled to an interest rate reduction under the SCRA by requiring servicers to use the authoritative Department of Defense database or alternative evidence provided by the borrower on a form developed by the Secretary; treat lump sum payments from Department of Defense loan repayment programs as the equivalent monthly payments for public service loan forgiveness; and require guaranty agencies to provide information to borrowers rehabilitating defaulted loans to help ensure that borrowers understand the available repayment options upon successfully completing the loan rehabilitation. The table below briefly summarizes the major provisions of the proposed regulations.

[1] *www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments.*

[2] Available at: *http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf.*

TABLE 1—SUMMARY OF PROPOSED REGULATIONS

Provision	Reg section	Description of provision
Participation rate index challenges and appeals.	§§ 668.16, 668.204, 668.208, and 668.214.	An institution may bring a timely PRI challenge or appeal in any year that its draft or official CDR is greater than or equal to 30 percent and less than or equal to 40 percent for any of the three most recent fiscal years, not just in the year that the institution faces sanctions. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent.
SCRA	§§ 682.202, 682.208, 682.410, 685.202.	Loan holders must proactively consult the authoritative Department of Defense DMDC database to apply the SCRA interest rate limit of six percent. Allows borrowers to supply alternative evidence of active duty service to demonstrate eligibility for the SCRA interest rate limit through a form developed by the Secretary when the borrower believes the database is inaccurate or incomplete.
Loan rehabilitation	§ 682.405	Makes changes to reflect statutory change in maximum collection costs that may be added to the balance of a loan upon rehabilitation from 18.5 percent to 16 percent and to reflect the requirement that GAs assign a loan to the Secretary if it qualifies for rehabilitation and the GA cannot find a buyer. Requires guaranty agencies to provide information to borrowers about their repayment options during and after loan rehabilitation.
REPAYE Plan		
Eligibility	§ 685.209	Available to all Direct Loan student borrowers.
Repayment period	§ 685.209	For a borrower who has loans for undergraduate education only, the balance of the loans will be forgiven after 20 years of qualifying payments. For a borrower who has at least one loan for graduate study, the balance of the loans will be forgiven after 25 years of qualifying payments. Payments made under the alternative repayment plan would count towards forgiveness under income-driven plans if the borrower returns to such a plan, but not towards public service loan forgiveness.
Treatment of married borrowers' income for determining payment.	§ 685.209	For married borrowers filing jointly, AGI includes the borrower's and spouse's income. For married borrowers filing separately, the spouse's income would be included unless the borrower certifies that the borrower is separated from the spouse or is unable to reasonably access the spouse's income information. In the case of separation or inability to access income information, the family size for the payment calculation would not include the spouse.
Treatment of borrowers who do not provide income documentation annually.	§ 685.209	Borrowers who do not supply income information can choose to leave the REPAYE plan and select another repayment plan for which they are eligible. Borrowers who do not supply income information within 10 days of deadline are placed on the alternative repayment plan with the monthly payment equaling the amount necessary to repay the loan in full within 10 years or the end of the 20-year or 25-year period applicable to the borrower under the REPAYE plan, whichever is earlier. The borrower may return to the REPAYE plan if income documentation is provided for the time the borrower was on a different repayment plan. Borrowers whose income increased during that period would be required to make an adjusted monthly payment so the difference between what they paid under the other plan and would have paid under the REPAYE plan is paid in full by the end of the 20-year or 25-year period.
Interest accrual in periods of negative amortization.	§ 685.209	For borrowers in negative amortization whose payments are not sufficient to pay the accrued interest in that period, the Department will: • In the first three years of repayment, not charge the remaining interest on Direct Subsidized Loans, with any periods of economic hardship deferment not included in the three year period; and • For Direct Unsubsidized Loans, Direct PLUS loans to graduate or professional students, the unsubsidized portion of Direct Consolidation Loans, Direct Subsidized and subsidized portions of Direct Consolidation loans after the three-year period, charge the borrower 50 percent of the remaining accrued interest for the period.
Treatment of Department of Defense lump sum payments for public service loan forgiveness.	§ 685.219	Lump sum payments made under Department of Defense loan repayment programs would be applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.

Discussion of Costs and Benefits

The proposed regulations in large part affect loan repayment options and processes, so they would largely affect student borrowers, the Federal Government, and loan servicers. The changes to the PRI appeal process affect institutions and the Federal Government. The following discussion describes the costs and benefits of the proposed regulations by key topic area.

REPAYE Plan

The proposed REPAYE plan would make available to borrowers an IDR plan with payments based on 10 percent of discretionary income and, for borrowers with only undergraduate loans, a 20-year repayment period to all borrowers with loans in repayment. In contrast, under the current regulations, only borrowers who received loans during specific time periods are eligible for an IDR plan with these benefits, and no borrowers who had loans before FY 2008 can take advantage of those plans. Additionally, the proposed REPAYE plan would not include the PFH requirement that is part of the Pay As You Earn repayment plan for the purpose of eligibility, further increasing access to IDR plans. The extension of the plan to a broader pool of borrowers would be a primary benefit of the REPAYE plan and would give student borrowers another tool to manage their loan payments. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, we estimate that six million borrowers would be eligible for the REPAYE plan, although not all of them would necessarily choose to enroll. Borrowers repaying under the REPAYE plan would also benefit from the plan's 50 percent reduction in the accrual of interest for borrowers in negative amortization. This would limit the rate at which loan balances increase and the amount ultimately owed.

In offering this increased access, while targeting the plan to the neediest borrowers, some features were changed from those in the PAYE repayment plan. In particular, there is no cap on the amount of the borrower's payment, so borrowers whose income results in a payment greater than it would be under standard repayment would have to pay the higher amount to maintain eligibility for future loan forgiveness. Borrowers who leave the REPAYE plan because they did not meet the requirement to annually recertify their income may reenter the REPAYE plan at any time, but must provide the income documentation for the relevant period and make additional payments if they would have paid more under the REPAYE plan.

To the extent the REPAYE plan reduces payments collected from borrowers, there is a cost to the Federal Government. This is described in greater detail in the Net Budget Impacts section of this analysis.

Other Provisions

The proposed regulatory changes to require loan holders to proactively use the Department of Defense's DMDC database and to allow borrowers to supply alternative evidence of active duty service through a form developed by the Secretary would benefit borrowers who are or have been in military service, reducing the burden on active duty servicemembers in obtaining application of the SCRA interest rate limit to their Federal student loans. These proposed changes are intended to ensure the six percent interest rate limit is applied for the correct time period and that borrowers receive the benefit to which they are entitled.

Similarly, the treatment of lump sum payments made by the Department of Defense on behalf of borrowers as the equivalent monthly payments for the purpose of public service loan forgiveness would ensure that borrowers who are otherwise entitled to public service loan forgiveness do not fail to qualify based on the way the Department of Defense loan repayment programs are administered. Based on NSLDS data, the Department estimates that less than one percent of student loan borrowers are affected by this issue.

The proposed regulations requiring guaranty agencies to provide information to FFEL Program borrowers transitioning from rehabilitating defaulted loans to loan repayment would benefit borrowers who struggle with repayment and could help to prevent those borrowers from redefaulting. The proposed regulations require guaranty agencies to inform borrowers about different repayment plan options and how the borrower can choose a plan. This assistance may help borrowers avoid additional negative credit events and allow them to enroll in a repayment plan that supports ongoing repayment of their loans.

Finally, the proposed changes to the PRI challenges and appeals process would permit some institutions to challenge their rate in any year, not just the one that could result in a loss of eligibility. Some non-Federal negotiators and community college advocates suggested these changes would encourage more community colleges to participate in the title IV loan programs, thus giving students additional options to finance their education at those institutions.

The proposed regulations would have administrative costs for guaranty agencies and loan holders that are detailed in the *Paperwork Reduction Act* section of this preamble. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, the Department does not expect that these proposed regulations would have a significant net budget impact.

Net Budget Impacts

The proposed regulations are estimated to have a net budget impact of $15.3 billion, of which $8.3 billion is a modification for existing cohorts from 1994 to 2015 and $7 billion is related to future cohorts from 2016 to 2025. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

These estimates were developed using the OMB's Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. In developing the following Accounting Statement, the Department also consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these proposed regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash

flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: For-profit institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

REPAYE Plan

The establishment of the REPAYE plan, which extends a plan with payments based on 10 percent of the borrower's discretionary income to borrowers with no restriction on when they borrowed, would have a major budget impact. The proposed REPAYE plan would differ from the existing Pay As You Earn repayment plan in several ways to better target the plan to the neediest borrowers and to reduce the costs in some areas to allow for the extension of the plan to additional borrowers. Of the provisions described in the *Summary of the Proposed Regulations,* the lack of a cap on the borrower's payment amount, the requirement for 25 years of payments to have loan forgiveness for any borrower with debt for graduate education, and the treatment of married borrowers who file taxes separately are important provisions to reduce the costs of the REPAYE plan, while the reduced interest accrual for borrowers in negative amortization and opening the plan to all student borrowers are significant drivers of the estimated costs. The availability of the proposed REPAYE plan, with its extension of reduced income percentage and shorter forgiveness period to earlier cohorts of borrowers, no standard repayment cap, limited accrual of interest for borrowers in negative amortization, 20-years forgiveness period for undergraduate debt and 25-year forgiveness period for graduate debt, process for handling borrowers who do not recertify their income annually, and treatment of married borrowers filing separately, is estimated to cost $15.3 billion.

To establish the baseline and to evaluate proposals related to IDR plans, the Department uses a micro-simulation model consisting of borrower-level data obtained by merging data on student loan borrowers derived from a sample of the National Student Loan Data System (NSLDS) with income tax data from the IRS. Interest and principal payments are calculated according to the regulations governing the IDR plans, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation; death, disability, or bankruptcy discharges; or public service loan forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-driven repayment to generate estimates of Federal costs.

In evaluating the costs of the proposed REPAYE plan, the Department assumes that, if possible, borrowers would elect the most beneficial plan for which they are eligible. Therefore, most borrowers who would be eligible for the PAYE repayment plan or the Income Based Repayment (IBR) Plan as provided for new borrowers after July 1, 2014 would stay in those plans. Many of the borrowers who would choose the REPAYE plan would be from earlier cohorts who were ineligible for the PAYE repayment plan or the IBR Plan for new borrowers after July 1, 2014. Based on this, the Department estimates that for cohorts from 1994 to 2025, approximately six million borrowers would be eligible for the REPAYE plan. We estimate that approximately 2 million borrowers would choose the REPAYE plan.

When the assumption for loan forgiveness is increased as a result of a policy, the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a net present value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the REPAYE plan is estimated to cost approximately $15.3 billion, of which $8.3 billion is a modification for existing cohorts from 1994 to 2015 and $7 billion is related to future cohorts from 2016 to 2025 as shown in Table 2.

TABLE 2—ESTIMATED OUTLAYS FOR COHORTS 2015–2025

Cohorts	MOD (1994–2015)	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
Outlays	.....	1,100	1,007	901	780	681	612	542	498	477	416	7,014
Total	8,264	1,100	1,007	901	780	681	612	542	498	477	416	15,278

Other Provisions

The other provisions of the proposed regulations are not estimated to have a significant net budget impact. The changes to the SCRA servicing requirements so that lenders and loan servicers utilize the authoritative Department of Defense database to ensure the SCRA interest rate limit is applied appropriately and allowing for alternative evidence would make it easier for eligible borrowers to receive their SCRA benefit. However, it does not extend eligibility to a new set of borrowers and the costs associated with eligible borrowers would be in the budget baseline for the President's FY 2016 budget. The treatment of lump-sum payments for borrowers who qualify for loan repayment under Department of Defense loan repayment programs may allow some additional borrowers to qualify for public service loan forgiveness. Less than one percent of borrowers are expected to be affected by this change, and the lump sum payment must equal the amount owed by the borrower for however many months for which the borrower receives credit toward forgiveness, so the change in cash flows from those estimated to receive public service loan forgiveness for military careers is not expected to be significant. We believe it is appropriate to allow these borrowers to receive credit towards months of payments for public service loan forgiveness in this instance so active duty military members receive the forgiveness to which they are entitled and already estimated to receive. The PRI challenges and appeals will expand the number of

such actions the Department will be involved with and may result in some schools retaining their participation in title IV, HEA programs, but we do not expect this to affect program volumes and costs in a significant way. Finally, the requirement that guaranty agencies provide information to assist borrowers in transitioning from rehabilitation of defaulted loans to loan repayment should benefit borrowers and may result in improved payment behavior, but we do not expect this to materially affect the amount collected from borrowers.

Assumptions, Limitations and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education and Department of Treasury systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey and the 2004 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits	
	7%	3%
Extension of income-driven repayment plan with payment based on 10 percent of income and a 20/25-year repayment to all cohorts of borrowers	Not Quantified.	
Transition assistance for borrowers rehabilitating loans. Easier access for military borrowers to SCRA and public service loan forgiveness benefits.		
Category	**Costs**	
	7%	3%
Costs of compliance with paperwork requirements	$5.95	$5.99
Category	**Transfers**	
	7%	3%
Reduced payments collected from some borrowers who choose the REPAYE plan	$1,844	$1,661

Alternatives Considered

In the interest of promoting good governance and ensuring that these proposed regulations produce the best possible outcome, the Department reviewed and considered various proposals from both internal sources as well as from non-Federal negotiators. We summarize below the major proposals that we considered but ultimately declined to implement in these proposed regulations.

The Department and the non-Federal negotiators exchanged proposals on the length of the repayment period for different types of borrowers. Initially, the Department proposed that borrowers with an outstanding loan balance of $57,500 or more when they entered the REPAYE plan would be required to make 25 years of qualifying payments to qualify for loan forgiveness. Borrowers with an outstanding loan balance below $57,500 would have to make 20 years of payments. The non-Federal negotiators offered several proposals regarding this tiered forgiveness provision, including indexing the threshold to any increases in the maximum aggregate loan amounts, basing it on the principal amount borrowed as opposed to the outstanding balance, or eliminating it and having a 20-year repayment period for all borrowers. The Department was not willing to eliminate the 20- and 25-year distinction entirely for budget and policy reasons, but did consider options for the different categories. In order to facilitate consensus, the Department agreed to a 20-year period for borrowers whose loans were all for undergraduate education and a 25-year period for all loans made to borrowers who took out a loan for graduate education. The Department was willing to consider this approach because the $57,500 amount was derived from the maximum loan amount for independent undergraduate borrowers. Compared to the original proposal with the $57,500 limit, this proposal from the non-Federal negotiators would not have a ''cliff effect,'' whereby a borrower who had as little as $1.00 in outstanding loan debt over the specified amount would have to repay for an additional five years before qualifying for loan forgiveness. Undergraduate borrowers who take out the maximum loan amount would benefit from this change, while low-borrowing graduate students would have a longer time to forgiveness.

The Department also considered alternative approaches with respect to borrowers who do not provide the required annual documentation of their income. Under the PAYE repayment plan, such a borrower has ten days after the deadline to submit payment information and have a new payment amount calculated. If the borrower does not provide the income documentation within that time, the borrower will have a payment calculated based on the standard repayment plan with a 10-year repayment period based on the balance at the time the borrower entered the PAYE repayment plan. This standard repayment cap was not included in the REPAYE plan, and the treatment of borrowers who do not provide income

information was the subject of much discussion. In evaluating options for handling such borrowers, the Department sought to provide an incentive for timely submission of income documentation and to provide a disincentive to those who would withhold updated information reflecting a significant increase in income. Options considered included an extended grace period for the borrower to submit the documentation, placing borrowers who did not submit documentation and did not choose an alternative plan into standard repayment with amortization over the remainder of the borrower's 20- or 25-year REPAYE plan repayment term, or applying the standard repayment plan amount as a minimum payment. Because the Department considers the absence of a standard repayment cap to be important for targeting the benefits of the REPAYE plan to the neediest borrowers and for reducing costs of the plan so that it can be extended to all cohorts of borrowers, reinstating a cap based on the standard payment was not an option. After much discussion, both internally and with the non-Federal negotiators, the treatment of borrowers who do not document their income summarized in *Borrowers Repaying Under the REPAYE Plan Who Do Not Provide Required Documentation of Income* was agreed upon at the third session of negotiations. The Department believes this approach allows those who do not provide the documentation because of confusion or difficulty in assembling the paperwork time to reenter the program and earn credit towards forgiveness for payments made under the alternative repayment plan, while those whose income increased in the time they did not provide the documentation would have to make up the difference by the end of the 20 or 25-year period.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 668.16.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations concern the relationship between certain Federal student loan borrowers and the Federal Government, with some of the provisions modifying the servicing and collection activities of guaranty agencies and other parties. The Department believes that the entities affected by these proposed regulations do not fall within the definition of a small entity. Additionally, the changes to the PRI challenges and appeals process may affect a small number of institutions that would qualify as small entities and potentially allow some to continue participating in title IV programs, but we do not expect the effect to be economically significant for a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 685.208, and 682.209 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Sections 668.16, 668.204, 668.208, and 668.214—Participation Rate Index Challenges and Appeals

Requirements: Timelines for submitting a challenge or appeal to the potential consequences of an institution's CDR on the basis of its PRI.

The proposed regulations would permit an institution to bring a timely PRI challenge or appeal in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal from that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. In addition, if the institution brought a successful PRI challenge with respect to a draft CDR that was less than

or equal to the corresponding official CDR, this would preclude provisional certification and loss of eligibility from being imposed based on the official CDR, without the institution needing to bring a PRI appeal in later years.

Burden Calculation: Because the proposed regulations would not fundamentally change an institution's basis for challenging or appealing its CDR, and would only alter the timeline in which an institution may submit its challenge or appeal, we do not believe that these regulations would significantly alter the burden on institutions. However, they would prevent a school from needing to appeal a final CDR on the basis of its PRI if the final CDR is less than or equal to the draft CDR on which a PRI challenge was successful.

We estimate that the change in the need to appeal a final CDR on the basis of PRI when a challenge to a comparable rate on the same basis was successful would prevent 50 appeals per year—15 from public institutions, 10 from not-for-profit institutions, and 25 from proprietary institutions. We have previously estimated that an appeal takes each institution 1.5 hours per response.

Under proposed §§ 668.16, 668.204, 668.208, and 668.214, therefore, for public institutions, we estimate burden would decrease by 23 hours per year (15 public institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For not-for-profit institutions, we estimate burden would decrease by 15 hours per year (10 not-for-profit institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For proprietary institutions, we estimate that burden would decrease by 37 hours per year (25 proprietary institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal).

Collectively, the total decrease in burden under §§ 668.16, 668.204, 668.208, and 668.214 would be 75 hours under OMB Control Number 1845–0022.

Sections 682.202, 682.208, and 682.410—Servicemembers Civil Relief Act in the FFEL Program

Requirements: Matching borrower identifiers in a loan holder's servicing system against the Department of Defense's DMDC database.

Under proposed § 682.208(j)(1), (6), and (7), a FFEL Program loan holder, including a guaranty agency, must match information in its servicing system, including the identifiers of borrowers, co-borrowers, and endorsers, against the Department of Defense's DMDC database to determine whether borrowers are eligible to receive an interest rate reduction under the SCRA.

Under proposed § 682.208(j)(5), any FFEL Program loan holder, including a guaranty agency, must notify a borrower if an interest rate reduction under the SCRA is applied as a result of the loan holder having received evidence of the borrower's or endorser's qualifying status having begun within 30 days of the date that the loan holder applies the interest rate reduction.

Under proposed § 682.208(j)(8), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction to a loan that was in the process of being paid in full through loan consolidation at the time the interest rate reduction was applied by returning the overpayment to the holder of the consolidation loan.

Under proposed § 682.208(j)(9), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction by returning the overpayment to the borrower.

Burden Calculation: There are approximately 53 public loan holders that hold loans for approximately 557,341 borrowers, 151 not-for-profit loan holders that hold loans for approximately 2,738,171 borrowers, and 3,204 proprietary loan holders that hold loans for approximately 10,524,463 borrowers. We estimate that one percent of borrowers are actually eligible for the SCRA interest rate limit.

Proposed § 682.208(j) would result in a shift in burden from borrowers to loan holders. Under the current regulations, a borrower is required to submit a written request for his or her loan holder to apply the SCRA interest rate limit and a copy of his or her military orders to support the request. Because, under the proposed regulations, a borrower would no longer be required to submit a written request or a copy of his or her military orders, the burden on borrowers would be almost completely eliminated. While borrowers would still be able to submit other evidence that they qualify for the SCRA interest rate limit and loan holders would be required to evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database would give rise to the need for a borrower to submit alternative evidence of his or her military service. However, anecdotal accounts suggest that the error rate of the DMDC database is de minimus. Therefore, the proposed regulations would eliminate all but 20 hours of burden on borrowers associated with the current regulation.

However, because the Department plans to create a form for borrowers to use to certify their active duty service in cases in which the borrower believes that the information in the DMDC database is incorrect, we estimate that 59 FFEL Program borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form would increase burden by 20 hours (59 borrowers multiplied by 0.33 hours per response).

For proposed § 682.208(j)(1), (6), and (7), we estimate that it would take each loan holder approximately three hours per month to extract applicable data from their servicing systems, format it to conform to the DMDC database file layout, perform quality assurance, submit the file to the DMDC database, retrieve the result, import it back into their systems, perform quality assurance, and then, to the extent that the borrower or endorser is or was engaged in qualifying military service, apply, extend, or end the SCRA interest rate limitation.

Under proposed § 682.208(j)(1), (6), and (7), therefore, for public loan holders, we estimate that this regulation would increase burden by 1,908 hours per year (53 public loan holders multiplied by 3 hours per month multiplied by 12 months). For not-for-profit loan holders, we estimate that this regulation would increase burden by 5,436 hours per year (151 not-for-profit loan holders multiplied by 3 hours per month multiplied by 12 months). For proprietary loan holders, we estimate that this regulation would increase burden by 115,344 hours per year (3,204 proprietary loan holders multiplied by 3 hours per month multiplied by 12 months).

For proposed § 682.208(j)(8), we estimate that it would take each loan holder 1 hour per borrower to refund overpayments for borrowers who have consolidated their loans. We estimate that, over the past six months, 69 percent of the borrowers who consolidated loans with an interest rate in excess of 6 percent. We further estimate that 0.1 percent of those consolidation loans would create an overpayment that would require a loan holder to issue a refund to the holder of the consolidation loan.

Under proposed § 682.208(j)(8), therefore, for public loan holders, we estimate that this regulation would increase burden by 4 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for

the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For not-for-profit loan holders, we estimate that this regulation would increase burden by 19 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For proprietary loan holders, we estimate that this regulation would increase burden by 73 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent).

For proposed § 682.208(j)(9), we estimate that it would take each loan holder 1 hour per borrower to refund overpayments for borrowers for whom the application of the SCRA interest rate limit caused their loan to be overpaid. We estimate that an overpayment would result for 0.05 percent of borrowers who have the SCRA interest rate limit applied.

Under proposed § 682.208(j)(9), therefore, for public loan holders, we estimate that this regulation would increase burden by 3 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For not-for-profit loan holders, we estimate that this regulation would increase burden by 14 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For proprietary loan holders, we estimate that this regulation would increase burden by 53 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent).

Collectively, the total increase in burden under proposed § 682.405 would be 122,854 hours under OMB Control Number 1845–0093. The burden associated with the form (20 hours) would be associated with OMB Control Number 1845—NEW.

Section 682.405—Loan Rehabilitation Agreement

Requirements: Providing information to borrowers about repayment options.

Under proposed § 682.405(b)(1)(xi) and (c), guaranty agencies would be required to provide information to borrowers with whom they have entered into a rehabilitation agreement to inform them of the repayment options available to them upon successfully completing their loan rehabilitation.

Burden Calculation: There are approximately 2,611,504 borrowers of FFEL Program loans who are in default, of which 799,904 have loans held by public guaranty agencies and 1,811,600 have loans held by not-for-profit guaranty agencies. Approximately 4.79 percent of those borrowers have entered into a rehabilitation agreement with a guaranty agency to rehabilitate their defaulted FFEL Program loans. Therefore, public guaranty agencies administer rehabilitation agreements with approximately 38,315 borrowers and not-for-profit guaranty agencies administer rehabilitation agreements with approximately 86,776 borrowers.

We estimate that it would take a guaranty agency 10 minutes (0.17 hours) per borrower to send the required communication to a borrower and respond to borrower inquiries generated by the communication.

Under proposed § 682.405(c), therefore, for public guaranty agencies, we estimate that this regulation would increase burden by 6,514 hours per year (38,315 borrowers multiplied by 0.17 hours per borrower). For not-for-profit guaranty agencies, we estimate that this regulation would increase burden by 14,752 hours per year (86,776 borrowers multiplied by 0.17 hours per borrower).

Collectively, the total increase in burden under proposed § 682.405 would be 21,266 hours under OMB Control Number 1845–0020.

Section 685.202—Servicemembers Civil Relief Act in the Direct Loan Program

Requirements: Borrowers would no longer be required to submit a written request and a copy of their military orders to receive an interest rate reduction under the SCRA; instead, the Department would, as in the FFEL Program, query the DMDC database to determine whether a borrower is eligible.

Proposed § 685.202(a)(11) would shift the burden from borrowers to the Secretary. Under the current regulations, borrowers are required to submit a written request for the Secretary to apply the SCRA interest rate limit and a copy of their military orders to support the request. Because, under the proposed regulations, borrowers would no longer be required to submit a written request or a copy of their military orders, the burden on borrowers would be eliminated. While borrowers would still be permitted to submit other evidence that they qualify for the SCRA interest rate limit, and the Secretary would evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database would give rise to a borrower needing to submit alternative evidence of his or her military service, but anecdotal accounts suggest that the error rate of the DMDC database is de minimis. Therefore, the proposed regulations would eliminate all but 5 hours of burden on borrowers that are associated with the current regulation.

However, because the Department plans to create a form for borrowers to provide a certification of the borrower's authorized official in cases where the borrower believes the DMDC database is inaccurate or incomplete, we estimate that 141 Direct Loan borrowers would submit such a form, and that it would take a borrower 20 minutes (0.33 hours) per response. We estimate that this form would increase burden by 47 hours (141 borrowers multiplied by 0.33 hours per response).

Collectively, the total decrease in burden for § 685.202 would be 681 hours under OMB Control Number 1845–0094. This would eliminate all but 47 hours of burden in OMB Control Number 1845–0094. The burden associated with the form (47 hours) would be associated with OMB Control Number 1845–NEW.

Sections 685.208 and 685.209—Revised Pay As You Earn Repayment Plan

Requirements: Application, recertification, documentation of income, and certification of family size.

Under proposed § 685.209(c)(4), a borrower selecting the REPAYE plan would apply for the plan, provide documentation of his or her income and, as applicable, his or her spouse's income, and provide a certification of family size. The borrower must provide this information annually. If a borrower who repays his or her Direct Loans under the REPAYE plan leaves the plan and subsequently wishes to return to the REPAYE plan, the borrower must provide income documentation and family size certifications for each year in which the borrower was not repaying his or her loans under the REPAYE plan after having left the plan before being allowed to re-enter the REPAYE plan.

Burden Calculation: These information collection requirements are calculated as part of the Income-Driven Repayment Plan Request, under OMB Control Number 1845–0102. This collection is associated with this

rulemaking because the proposed regulations require that the collection be modified to encompass the REPAYE plan. Currently, we estimate that it takes 20 minutes (0.33 hours) to complete the Income-Driven Repayment Plan Request and that 3,159,132 Direct Loan and FFEL Program borrowers complete the form. Even though this form will be revised to include the REPAYE plan, we do not believe that it will take any additional time for a borrower to complete the form. Therefore, we expect the burden hours per response to remain 20 minutes (0.33 hours). However, we are making an adjustment to the number of borrowers who complete the form based on new data and an overall increase in the borrower population. The adjustment to the number of borrowers who complete the form would increase that number from 3,159,132 borrowers to 4,840,000 borrowers. However, because the REPAYE plan would be available to all Direct Loan borrowers, regardless of when the borrower took out their loans, and because there would be no requirement for the borrower to demonstrate PFH to enroll in the REPAYE plan, we estimate that the number of respondents would increase by 1,250,000 borrowers. This would bring the total number of respondents to 6,090,000 borrowers, of which only 1,250,000 of the increase would be attributable to the REPAYE plan.

Collectively, the total increase in burden for §§ 685.208 and 685.209 would be 967,186 hours (2,930,868 additional borrowers multiplied by 0.33 hours per response), of which 412,500 hours (1,250,000 additional borrowers multiplied by 0.33 hours per response) would be attributable to the REPAYE plan under OMB Control Number 1845–0102. Collectively, the total increase in burden under §§ 685.208 and 685.209 under OMB Control Number 1845–0021 would be 0 hours.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using wage data developed using U.S. Bureau of Labor Statistics data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $11,969,686 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions, lenders, and guaranty agencies and $16.30 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
668.16, 668.204, 668.208, 668.214—PRI challenge and appeal.	This regulation would permit an institution to bring a timely PRI challenge in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.	OMB 1845–0022—This would be a revised collection. We estimate that burden on institutions would decrease by 75 hours.	−$2,741
682.202 and 682.208—SCRA in the FFEL Program.	Would expand current regulations to require loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the Department of Defense.	OMB 1845–0093—This would be a revised collection. We estimate that burden on loan holders would increase by 122,854 hours and that all except 20 hours of burden on borrowers would be eliminated. OMB 1845–NEW—This would be a new collection. We estimate that burden on borrowers would increase by 20 hours.	$4,480,876

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
682.405—Loan rehabilitation.	This change would require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into an agreement to rehabilitate a defaulted FFEL Program loan.	OMB 1845–0020—This would be a revised collection. We estimate that burden on loan holders would increase by 21,266 hours.	$777,272
685.202	Would modify current regulations to require loan holders to determine a borrower's active duty military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the Department of Defense..	OMB 1845–0094—This collection would be revised. We estimate that all but 47 hours of burden on borrowers would be eliminated. OMB 1845—NEW This would be a new collection. We estimate that burden on borrowers would increase by 47 hours.	−$9,471
685.208 and 285.209—REPAYE plan.	Would add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209 of the Direct Loan Regulations. The REPAYE plan is modeled on the Pay as You Earn (PAYE) repayment plan, and would be available to all Direct Loan student borrowers regardless of when the student borrowers received their Direct Loans.	OMB 1845–0021—This collection would not change because all burden associated with the collection requirements is contained in 1845–0102. OMB 1845–0102—This would be a revised collection. We estimate that burden would increase on borrowers by 967,186 hours, of which 412,500 hours would be attributable to the proposed regulation.	$15,764,838, of which $6,723,750 would be attributable to the proposed regulation.
685.219—Public Service Loan Forgiveness.	Would permit lump sum payments made on a borrower's behalf by the Department of Defense to be treated like certain other payments made on behalf of borrowers who have served in AmeriCorps or the Peace Corps.	OMB 1845–0021—This provision contains no collection requirements.	$0

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0020	8,241,898	+ 21,266
1845–0022	2,216,045	− 75
1845–0093	122,874	+ 122,275
1845–0094	47	− 634
1845–0102	2,009,700	+ 967,186
1845—NEW	67	+ 67
Total	12,590,631	= 1,110,085

We have prepared Information Collection Requests for these information collection requirements. If you want to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notice.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov*.

In preparing your comments, you may want to review the Information Collection Requests, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this notice. These proposed collections are identified as proposed collections 1845–0020, 1845–0022, 1845–0093, 1845–0094, 1845–0102, and 1845—NEW.

We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by August 10, 2015. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 1, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 668, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.16 is amended by:

■ A. Revising paragraph (m)(2)(ii)(B).

■ B. Adding paragraph (m)(2)(ii)(C).

■ C. Revising paragraphs (m)(2)(iv) and (v).

The revisions and addition read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(m) * * *

(2) * * *

(ii) * * *

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(*1*) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(*2*) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

* * * * *

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraph (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

* * * * *

■ 3. Section 668.204 is amended by revising paragraphs (c)(1)(ii) and (iii) and (c)(5) to read as follows:

§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

* * * * *

(c) * * *

(1)(i) * * *

(ii) Subject to § 668.208(b), you may challenge a potential loss of eligibility under § 668.206(a)(2), based on any cohort default rate that is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years, if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on any cohort default rate that fails to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

* * * * *

(5) If we determine that you qualify for continued eligibility or full

certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. Unless that next official cohort default rate is less than or equal to your draft cohort default rate, a successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, or if the next official cohort default rate published is less than or equal to the draft rate you successfully challenged, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2), or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

* * * * *

■ 4. Section 668.208 is amended by revising paragraphs (a)(2)(ii) and (b)(2) and (3) to read as follows:

§ 668.208 General requirements for adjusting official cohort default rates and for challenging or appealing their consequences.

(a) * * *

(2) * * *

(ii) A participation rate index challenge or appeal submitted under this section and § 668.204 or § 668.214;

* * * * *

(b) * * *

(2) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, more than once on that cohort default rate.

(3) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

* * * * *

■ 5. Section 668.214 is amended by revising paragraphs (a)(1) through (3) and (c)(2) to read as follows:

§ 668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You do not lose eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if you bring an appeal in accordance with this section that demonstrates that your participation rate index for that cohort's fiscal year is equal to or less than 0.0832.

(2) Subject to § 668.208(b), you do not lose eligibility under § 668.206(a)(2) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for any of the three most recent cohorts' fiscal years is equal to or less than 0.0625.

(3) Subject to § 668.208(b), you are not placed on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for either of those two cohorts' fiscal years is equal to or less than 0.0625.

* * * * *

(c) * * *

(2) Notice under § 668.205 of a cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 6. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 7. Section 682.202 is amended by revising paragraph (a)(8) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (4) of this section, a loan holder must use the official electronic database maintained by the Department of Defense to identify all borrowers with an outstanding loan who are active duty servicemembers, as defined in 10 U.S.C. 101(d)(1) and (5), and ensure the interest rate on a borrower's qualified loans with an outstanding balance does not exceed the six percent maximum interest rate under 50 U.S.C. 527, App. section 207(a) on FFEL Program loans made prior to the borrower entering active duty status. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan.

* * * * *

■ 8. Section 682.208 is amended by adding paragraph (j) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(j)(1) Effective July 1, 2016, a loan holder is required to use the official electronic database maintained by the Department of Defense, to—

(i) Identify all borrowers who are active duty servicemembers and who are eligible under § 682.202(a)(8); and

(ii) Confirm the dates of the borrower's active duty status and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent.

(2) The loan holder must compare its list of borrowers against the database maintained by the Department of Defense at least monthly to identify servicemembers who are in active duty status for the purpose of determining eligibility under § 682.202(a)(8).

(3) A borrower may provide the loan holder with alternative evidence of active duty status to demonstrate eligibility if the borrower believes that the information contained in the Department of Defense database is inaccurate or incomplete. Acceptable alternative evidence includes—

(i) A copy of the borrower's military orders; or

(ii) The certification of the borrower's military service from an authorized official using a form approved by the Secretary.

(4)(i) When the loan holder determines that the borrower is eligible under § 682.202(a)(8), the loan holder must ensure the interest rate on the borrower's loan does not exceed the SCRA interest rate limit of six percent.

(ii) The loan holder must apply the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database, or alternative evidence of active duty status received under paragraph (j)(3) of this section, using the combination of evidence that provides the borrower with the earliest active duty start date and the latest active duty end date.

(iii) In the case of a reservist, the loan holder must use the reservist's notification date as the start date of the military service period.

(5) When the loan holder applies the SCRA interest rate limit of six percent to a borrower's loan, it must notify the borrower in writing within 30 days that the interest rate on the loan has been reduced to six percent during the borrower's period of active duty service.

(6)(i) For PLUS loans with an endorser, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan based on the borrower's or

endorser's active duty status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan.

(ii) If both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(7)(i) For joint consolidation loans, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan if either of the borrowers is eligible for the SCRA interest rate limit under § 682.202(a)(8).

(ii) If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest active duty start date of either party and the latest active duty end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(8) If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan.

(9) For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan, the loan holder must refund the amount of that overpayment to the borrower.

* * * * *

■ 9. Section 682.405 is amended:

■ A. In paragraph (a)(2)(ii), by adding the words ''or assigned to the Secretary'' after the word ''lender''.

■ B. In paragraph (b)(1)(vi), by adding the words ''or assignment to the Secretary'' after the words ''repurchase by an eligible lender'' and removing the word ''other'' after the words ''The agency may not impose any''.

■ C. By revising paragraph (b)(1)(vi)(B).

■ D. In paragraph (b)(1)(xi), by removing the word ''During'', and adding, in its place, the words ''Except as provided in paragraph (c) of this section, during''.

■ E. By redesignating paragraph (b)(2) as paragraph (b)(2)(i).

■ F. By adding paragraph (b)(2)(ii).

■ G. In paragraph (b)(3), by adding the words ''or assignment to the Secretary'' after the words ''to an eligible lender''.

■ H. In paragraph (b)(3)(i), by adding the words ''or assignment'' after the words ''of the sale''.

■ I. In paragraph (b)(3)(i)(A), by adding the words ''or assignment'' after the words ''such sale''.

■ J. In paragraph (b)(4), by removing the citation ''§ 682.209(a) or (h)'', and adding, in its place, the citation ''§ 682.209(a) or (e)''.

■ K. By revising paragraph (c).

The addition and revisions reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B) Of the amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and

* * * * *

(2) * * *

(ii) If the guaranty agency has been unable to sell the loan, the guaranty agency must assign the loan to the Secretary.

* * * * *

(c) A guaranty agency must make available to the borrower—

(1) During the rehabilitation period, information about repayment plans, including the income-based repayment plan, that may be available to the borrower upon rehabilitating the defaulted loan and how the borrower can select a repayment plan after the loan is purchased by an eligible lender or assigned to the Secretary; and

(2) After the successful completion of the rehabilitation period, financial and economic education materials, including debt management information.

* * * * *

■ 10. Section 682.410 is amended by revising paragraph (b)(3) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(3) *Interest charged by guaranty agencies.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(A) The rate established by the terms of the borrower's original promissory note; or

(B) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(ii) If the guaranty agency determines that the borrower is eligible for the interest rate limit of six percent under § 682.202(a)(8), the interest rate described in paragraph (b)(3)(i) shall not exceed six percent.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 11. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 12. Section 685.202 is amended by revising paragraph (a)(11) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(11) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (10) of this section, upon the Secretary's receipt of evidence of the borrower's active duty military service, the maximum interest rate under 50 U.S.C. 527, App. section 207(a), on Direct Loan Program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty military service. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan.

* * * * *

■ 13. Section 685.208 is amended:

■ A. By revising paragraph (a)(1)(i)(D).

■ B. In paragraph (a)(4)(i), by removing the word ''the'' before the words ''income-contingent'' and adding, in its place, the word ''an''.

■ C. In paragraph (a)(5), by removing the word ''or'' after the words ''income-contingent'' and adding, in its place, the words ''repayment plans and the''.

■ D. By redesignating paragraphs (k)(3) and (4) as paragraphs (k)(4) and (5), respectively.

■ E. By adding a new paragraph (k)(3).

The revision and addition read as follows:

§ 685.208 Repayment Plans.

(a) * * *

(1) * * *

(i) * * *

(D) The income-contingent repayment plans in accordance with paragraph (k)(2) or (3) of this section; or

* * * * *

(k) * * *

(3) Under the income-contingent repayment plan described in

§ 685.209(c), a borrower's required monthly payment is limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with § 685.209(c)(4)(vii)(E).

* * * * *

■ 14. Section 685.209 is amended:

■ A. By revising the introductory text of paragraph (a)(1).

■ B. In the second sentence of paragraph (a)(2)(iii), by adding the words ''or the Revised Pay As You Earn repayment plan'' immediately after the words, ''the income-based repayment plan''.

■ C. In paragraph (a)(6)(i)(E), by adding the punctuation and words '', the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,'' immediately after the words ''this section''.

■ D. By redesignating paragraph (a)(6)(i)(F) as paragraph (a)(6)(i)(G).

■ E. By adding a new paragraph (a)(6)(i)(F).

■ F. In paragraph (a)(6)(iii)(A), by adding the punctuation and words '', the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,'' immediately after the words ''this section''.

■ G. In paragraph (a)(6)(iii)(B), by adding the punctuation and words '', the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,'' immediately after the words ''this section''.

■ H. In paragraph (b)(3)(iii)(B)(*3*), by adding the words ''or the Revised Pay As You Earn repayment plan'' after the words ''repayment plan''.

■ I. By adding paragraph (b)(3)(iii)(B)(*4*).

■ J. By adding paragraph (c).

The revision and additions read as follows:

§ 685.209 Income-contingent repayment plans.

(a) * * *

(1) *Definitions.* As used in this section, other than as expressly provided for in paragraph (c)—

* * * * *

(6) * * *

(i) * * *

(F) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(*4*) Periods in which the borrower made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

* * * * *

(c) *Revised Pay As You Earn repayment plan.* The Revised Pay As You Earn repayment plan (REPAYE plan) is an income-contingent repayment plan under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) *Definitions.* As used in this paragraph (c)—

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is—

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.

(ii) *Eligible loan* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *Family size* means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. Family size does not include the borrower's spouse for a borrower filing separately if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs;

(iv) *Partial financial hardship* means a circumstance in which—

(A) For an unmarried borrower, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(B) For a married borrower, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elected the REPAYE plan, exceeds 10 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size; and

(v) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with paragraph (c)(4)(vii)(E) of this section.

(ii) The Secretary adjusts the calculated monthly payment if—

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower's eligible loans are not solely Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

(*1*) Each borrower's percentage of the couple's total eligible loan debt;

(*2*) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(*1*) of this section; and

(*3*) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (c)(2)(ii)(B)(*2*) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(C) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is less than $5.00, in which case the borrower's monthly payment is $0.00; or

(D) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with § 685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section—

(*1*) Does not include any period during which the borrower receives an economic hardship deferment;

(*2*) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(*3*) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the income-based repayment plan or the Pay As You Earn repayment plan.

(iv)(A) Except as provided in paragraph (c)(2)(iii) of this section, accrued interest is capitalized—

(*1*) When the Secretary determines that a borrower does not have a partial financial hardship; or

(*2*) At the time a borrower leaves the REPAYE plan.

(B)(*1*) The amount of accrued interest capitalized under paragraph (c)(2)(iv)(A)(*1*) of this section is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the REPAYE plan.

(*2*) After the amount of accrued interest reaches the limit described in paragraph (c)(2)(iv)(B)(*1*) of this section, interest continues to accrue, but is not capitalized, while the borrower remains on the REPAYE plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the REPAYE plan or the Secretary determines the borrower does not have a partial financial hardship.

(vi) A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with § 685.210(b).

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the REPAYE plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(3)(i) of this section.

(4) *Eligibility documentation, verification, and notifications.* (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower's monthly payment amount for that year. For each subsequent year that the borrower remains on the plan, the Secretary also determines whether the borrower has a partial financial hardship. To make these determinations, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) Unless otherwise directed by the Secretary, the borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making the determinations described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (c)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (c)(4)(i)(C) and (c)(4)(vi) and (vii) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (c)(4)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in paragraph (c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraphs (c)(4)(vi) and (vii) of this section.

(iv) Each time the Secretary makes a determination that a borrower does not have a partial financial hardship for a subsequent year that the borrower wishes to remain on the plan, the Secretary sends the borrower a written notification that unpaid interest will be capitalized in accordance with paragraph (c)(2)(iv) of this section.

(v) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraph (c)(4)(i)(A) or (B) of this section, the borrower remains on his or her current repayment plan.

(vi) Except as provided in paragraph (c)(4)(viii) of this section, if a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) Ten years from the date the borrower begins repayment under the alternative repayment plan; or

(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (ii) of this section.

(vii) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(vi) of this section, the Secretary sends the borrower a written notification informing the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(vi) of this section;

(C) The borrower may change to another repayment plan in accordance with § 685.210(b);

(D) A borrower who has been removed from the REPAYE plan in accordance with paragraph (c)(4)(vi) of this section or changes to another repayment plan in accordance with paragraphs (c)(2)(vi) or (c)(4)(vi)(C) of this section may return to the REPAYE plan if he or she provides the documentation, as described in paragraphs (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower's current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;

(E) If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As Your Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count toward forgiveness under the REPAYE plan or the other repayment plans under § 685.209(a), § 685.209(b), or § 685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(vi) of this section will not count toward public service loan forgiveness under § 685.219.

(viii) The Secretary does not take the action described in paragraph (c)(4)(vi) of this section if the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(ix) If the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(*1*) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.209(c)(3)(i).

(*2*) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(*3*) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(5) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(5)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(5)(ii) of this section.

(ii)(A) A borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an

undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(5)(v) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(5)(v) of this section.

(iv) For the purpose of paragraph (c)(5)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly payment amount of $0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based-repayment plan described in § 685.221, including a monthly payment amount of $0.00;

(C) A monthly payment made under—

(*1*) The Direct Loan standard repayment plan described in § 685.208(b);

(*2*) The alternative repayment plan described in paragraphs (c)(4)(vi) and (vii) of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;

(*3*) Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b); or

(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans.

(v) For a borrower who qualifies for the REPAYE plan, the beginning date for the 20-year or 25-year repayment period is—

(A) If the borrower made payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans; or

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221—

(*1*) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower qualified for the REPAYE plan;

(*2*) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower qualified for the REPAYE plan;

(*3*) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(B)(*1*) or (*2*) of this section, the date the borrower made a payment on the loan under the REPAYE plan;

(*4*) If the borrower consolidates his or her eligible loans, the date the borrower made a qualifying monthly payment on the Direct Consolidation Loan; or

(*5*) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(A) or (B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

(vi) Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year or 25-year forgiveness period.

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(5) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(*1*) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(*2*) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(*3*) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (c)(5) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(*1*) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(*2*) Provides the borrower with the information described in paragraph (c)(5)(vii)(A)(*3*) of this section; and

(*3*) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

* * * * *

■ 15. Section 685.219 is amended:

■ A. In paragraph (c)(1)(iii), by adding the words and punctuation ''or who qualifies for partial repayment of his or her loans under the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,'' after ''Peace Corps position''.

■ B. In paragraph (c)(1)(iv)(D), by removing the word ''Any'' and adding, in its place, the words ''Except for the alternative repayment plan, any'' and removing the word ''paid'' immediately after the words ''monthly payment amount''.

■ C. In paragraph (c)(2), by adding the words and punctuation ''or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,'' after the words ''leaving the Peace Corps''.

■ D. By adding a new paragraph (c)(3).

The addition reads as follows:

§ 685.219 Public Service Loan Forgiveness Program.

* * * * *

(c) * * *

(1) * * *

(3) The Secretary considers lump sum payments made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense, to be qualifying payments in accordance with paragraph (c)(2) of this section for each year that a lump sum payment is made.

* * * * *

■ 16. Section 685.221 is amended:

■ A. In the second sentence of paragraph (b)(3), by adding the words

''or the Revised Pay As You Earn repayment plan'' immediately after the words ''the Pay As You Earn repayment plan''.

■ B. By redesignating paragraph (f)(1)(vi) as paragraph (f)(1)(vii).

■ C. By adding a new paragraph (f)(1)(vi).

■ D. In paragraph (f)(3)(i), by adding the punctuation and words '', the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment plan,'' immediately after the words ''repayment plan''.

■ E. In paragraph (f)(3)(ii), by removing the words ''the income-contingent repayment plan'' and adding, in their place, the words ''one of the repayment plans described in paragraph (f)(3)(i) of this section''.

The addition reads as follows:

§ 685.221 Income-based repayment plan.

* * * * *

(f) * * *

(1) * * *

(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(vi) and (vii) prior to changing to a repayment plan described under § 685.209 or § 685.221;

* * * * *

[FR Doc. 2015–16623 Filed 7–8–15; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 131 July 9, 2015

Part V

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2011–BT–TP–0071]

RIN 1904–AC67

Energy Conservation Program: Test Procedures for Integrated Light-Emitting Diode Lamps

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking (SNOPR) proposes a test procedure for light-emitting diode (LED) lamps (hereafter referred to as LED lamps) to support the implementation of labeling provisions by the Federal Trade Commission (FTC), as well as the ongoing general service lamps rulemaking, which includes LED lamps. The SNOPR proposes test procedures for determining the lumen output, input power, lamp efficacy, correlated color temperature (CCT), color rendering index (CRI), power factor, lifetime, and standby mode power for LED lamps. The SNOPR also proposes a definition for time to failure to support the definition of lifetime. This SNOPR revises the previous proposed test procedures for LED lamps by referencing two recently published industry standards that describe a process for taking lumen maintenance measurements and projecting those measurements for use in the lifetime test method.

DATES: DOE will accept comments, data, and information regarding this SNOPR, but no later than August 10, 2015. See section V, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for LED lamps, and provide docket number EE–2011–BT–TP–0071 and/or regulatory information number (RIN) 1904–AC67. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: LEDLamps-2011-TP-0071@ee.doe.gov* . Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

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

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/18.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

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

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1604. Email: *light_emitting_diodes@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

DOE proposes to incorporate by reference the following industry standards into 10 CFR part 430.

1. ANSI [1]/IES [2] RP–16–2010, ''Nomenclature and Definitions for Illuminating Engineering.''

2. IES LM–79–08, ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products.''

3. IES LM–84–14, ''Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires.''

4. IES TM–28–14, ''Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires.''

Copies of the industry standards can be obtained from *http://www.ies.org/*, or can be reviewed in person at U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. For further information on accessing IBR standards, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.* See section III.M for a further discussion of these standards.

Table of Contents

I. Authority and Background
II. Synopsis of the Supplemental Notice of Proposed Rulemaking
III. Discussion
A. Scope of Applicability
B. Proposed Approach for Determining Lumen Output, Input Power, Lamp Efficacy, Correlated Color Temperature, and Color Rendering Index
1. Test Conditions
2. Test Setup
3. Test Method
C. June 2014 and Lifetime SNOPR Proposals
1. Definition of Lifetime and Time to Failure of Integrated Light-Emitting Diode Lamps
2. Test Duration
3. Test Duration Operating Conditions
4. Stress Testing
5. Color Maintenance
D. Proposed Approach for Lifetime Measurements
1. Test Conditions
2. Test Setup
3. Test Method
4. Projection Method
E. Proposed Approach for Standby Mode Power
F. Proposed Approach for Power Factor
G. Basic Model, Minimum Sample Size, and Determination of Represented Values
1. Basic Model
2. Minimum Sample Size
3. Determination of Represented Values
H. Rounding Requirements
1. Lumen Output
2. Correlated Color Temperature
3. Lifetime
4. Power Factor
I. Interaction with ENERGY STAR
J. Laboratory Accreditation
K. Certification
L. Effective and Compliance Date
M. Description of Standards Incorporated by Reference
N. Ceiling Fan Light Kits using LED Lamps
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Order 12866

[1] American National Standards Institute

[2] Illuminating Engineering Society.

B. Review under the Regulatory Flexibility Act
1. Estimated Small Business Burden
2. Duplication, Overlap, and Conflict With Other Rules and Regulations
3. Significant Alternatives to the Proposed Rule
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
V. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.''

Under EPCA, this program consists of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. This rulemaking proposes test procedures that manufacturers of integrated LED lamps (hereafter referred to as ''LED lamps'') would use to meet two requirements, namely, to: (1) Satisfy any future energy conservation standards for general service LED lamps, and (2) meet obligations under labeling requirements for LED lamps promulgated by the Federal Trade Commission (FTC).

First, test procedures in this rulemaking would be used to assess the performance of LED lamps relative to any potential energy conservation standards in a future rulemaking that includes general service LED lamps. DOE is developing energy conservation standards for general service lamps (GSLs), a category of lamps that includes general service LED lamps. 79 FR 73503 (Dec. 11, 2014).

Second, this rulemaking supports obligations under labeling requirements promulgated by FTC under section 324(a)(6) of EPCA (42 U.S.C. 6294(a)(6)). The Energy Independence and Security Act of 2007 (EISA 2007) section 321(b) amended EPCA (42 U.S.C. 6294(a)(2)(D)) to direct FTC to consider the effectiveness of lamp labeling for power levels or watts, light output or lumens, and lamp lifetime. This rulemaking supports FTC's determination that LED lamps, which had previously not been labeled, require labels under EISA section 321(b) and 42 U.S.C. 6294(a)(6) in order to assist consumers in making purchasing decisions. 75 FR 41696, 41698 (July 19, 2010).

DOE previously published three **Federal Register** documents pertaining to the test procedure for LED lamps. On April 9, 2012, DOE published a test procedure NOPR (hereafter the April 2012 NOPR). 77 FR 21038. Following the publication of the NOPR, DOE held a public meeting on May 3, 2012, to receive feedback from interested parties. On June 3, 2014, DOE published a test procedure SNOPR (hereafter the June 2014 SNOPR) primarily revising its proposal for lifetime measurements. 79 FR 32020. Then on June 26, 2014, DOE published a second SNOPR (hereafter the lifetime SNOPR) revising the definition of lifetime for LED lamps. 79 FR 36242.

II. Synopsis of the Supplemental Notice of Proposed Rulemaking

This SNOPR builds upon both the June 2014 SNOPR and the lifetime SNOPR by proposing a method for determining power factor and revising the proposed method of measuring and projecting the time to failure of integrated LED lamps based on public comment and the 2014 publication of industry standards IES LM–84–14,[3] ''Measuring Luminous Flux and Color Maintenance of LED Lamp, Light Engines, and Luminaires,'' and IES TM–28–14,[4] ''Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires.'' DOE reviewed the procedures provided in these Illuminating Engineering Society (IES) standards and determined that IES LM–84–14 and IES TM–28–14 contain the most relevant test procedure and projection method based on written comments submitted by interested parties and discussions with industry experts. DOE also proposed minor changes in response to comments received to date.

III. Discussion

A. Scope of Applicability

EPCA defines LED as a p-n junction[5] solid-state device, the radiated output of which, either in the infrared region, visible region, or ultraviolet region, is a function of the physical construction, material used, and exciting current[6] of the device. (42 U.S.C. 6291(30)(CC)) In the June 2014 SNOPR, DOE stated that this rulemaking applies to LED lamps that meet DOE's proposed definition of an integrated LED lamp, which is based on the term as defined by ANSI/IES RP–16–2010. This standard defines integrated LED lamps as an integrated assembly that comprises LED packages (components) or LED arrays (modules) (collectively referred to as an LED source), LED driver, ANSI standard base, and other optical, thermal, mechanical and electrical components (such as phosphor layers, insulating materials, fasteners to hold components within the lamp together, and electrical wiring). The LED lamp is intended to connect directly to a branch circuit through a corresponding ANSI standard socket. 79 FR 32020, 32021 (June 3, 2014).

B. Proposed Approach for Determining Lumen Output, Input Power, Lamp Efficacy, Correlated Color Temperature, and Color Rendering Index

The June 2014 SNOPR proposed to incorporate IES LM–79–2008 for determining lumen output, input power, CCT, and CRI with some modifications. 79 FR 32022. IES LM–79–2008 specifies the test conditions and setup at which the measurements and calculations must be performed. IES LM–79–2008 also specifies the methodology for measuring lumen output, input power, CCT, and CRI. Sections III.B.1 through III.B.3 discuss comments received on these requirements.

1. Test Conditions

In the June 2014 SNOPR, DOE proposed that the ambient conditions for testing LED lamps be as specified in section 2.0[7] of IES LM–79–2008. 79 FR

[3] ''Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires.'' Approved by IES on March 31, 2014.

[4] ''Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires.'' Approved by IES on May 20, 2014.

[5] P-n junction is the boundary between p-type and n-type material in a semiconductor device, such as LEDs. P-n junctions are diodes, active sites where current can flow readily in one direction but not in the other direction.

[6] Exciting current is the current passing through an LED chip during steady-state operation.

[7] IES standards use the reference 2.0, 3.0, etc. for each primary section heading. Sub-sections under each of these sections are referenced as 2.1, 2.2, 3.1,

Continued

32023. These conditions include setup and ambient temperature control, as well as air movement requirements. Both are discussed in further detail below.

Section 2.2 of IES LM–79–2008 specifies that photometric measurements shall be taken at an ambient temperature of 25 degrees Celsius (°C) ± 1 °C, and that the temperature shall be measured at a point not more than one meter from the LED lamp and at the same height as the lamp. The standard requires that the temperature sensor that is used for measurements be shielded from direct optical radiation from the lamp or any other source to reduce the impact of radiated heat on the ambient temperature measurement. The June 2014 SNOPR stated that this setup for measuring and controlling ambient temperature is appropriate for testing because it requires that the lamp be tested at room temperature and in an environment that is commonly used for testing other lighting technologies. 79 FR 32023.

DOE received comment from ASAP, ACEEE, and NRDC (hereafter referred to as the Joint Comment) recommending that directional LED lamps and those lamps labeled ''suitable for use in enclosed fixtures'' be tested under the elevated temperature conditions [8] required by the ENERGY STAR® Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0.[9] (Joint Comment, No. 34 at p. 2)

The operating temperature of LED lamps varies depending on the application for which they are installed. However, testing at an ambient temperature of 25 °C ± 1°C is consistent with other lighting products such as general service fluorescent lamps (GSFLs), compact fluorescent lamps (CFLs), and incandescent reflector lamps (IRLs). Therefore, DOE maintains its proposal from the June 2014 SNOPR that photometric measurements shall be taken at an ambient temperature of 25 °C ± 1 °C, and that the temperature shall be measured at a point not more than one meter from the LED lamp and at the same height as the lamp. Measuring at an ambient temperature of 25 °C ± 1°C will enable DOE, industry, and consumers to compare general service lamp products across different technologies.

In the June 2014 SNOPR, DOE also proposed that the requirement for air movement around the LED lamp be as specified in section 2.4 of IES LM–79–2008, which requires that the airflow around the LED lamp be such that it does not affect the lumen output measurements of the tested lamp. 79 FR 32023. These requirements would apply to lamps measured in both active mode and standby mode.

Cree, OSRAM Sylvania, Inc., (hereafter referred to as OSI), and the National Electrical Manufacturers Association (hereafter referred to as NEMA) submitted a comment supporting DOE's proposal to reference IES LM–79–2008 for all photometric testing of integrated LED lamps. (Cree, No. 31 at p. 1; OSI, No. 32 at p. 2; NEMA, No. 30 at p. 3) However, other stakeholders suggested additional requirements for air movement. The Joint Comment indicated concern that section 2.4 of IES LM–79–2008 does not provide informative procedures for measuring air movement and could yield distorted test results that are not representative of typical field conditions. It recommended that DOE revert to the April 2012 NOPR proposal that included considerations for specifying a method for determination of a draft-free environment, such as in section 4.3 of IES LM–9–2009, which requires that a single-ply tissue paper be held in place of the lamp to allow for visual observation of any drafts. The Joint Comment indicated that the procedures described in section 4.3 of IES LM–9–2009 provide a simple, inexpensive method for determining a draft-free environment without adding significant additional burden on manufacturers. (Joint Comment, No. 34 at p. 1)

DOE believes that additional requirements for a visual inspection of a single-ply tissue would not improve measurement accuracy relative to current industry practice. Therefore, in this SNOPR, DOE maintains its proposal to use the requirements in IES LM–79–2008 to ensure that air movement is minimized to acceptable levels.

2. Test Setup

In the June 2014 SNOPR, DOE proposed that LED lamps be positioned such that an equal number of units are oriented in the base-up and base-down orientations during testing. 79 FR 32025. As discussed in the June 2014 SNOPR, DOE collected test data for several LED lamps tested in base-up, base-down, and horizontal orientations, and analyzed the data to determine the variation of input power, lumen output, CCT, and CRI in each of these three orientations. The analysis of the test data revealed that some lamp models exhibited variation between the three orientations. Of the three orientations, analysis indicated that the base-up and base-down orientations represent the best (highest lumen output) and worst (lowest lumen output) case scenarios, respectively. Therefore, there is no need to test horizontally. Testing LED lamps in the base-up and base-down orientations would apply to lamps measured in both active mode and standby mode. *Id.*

While NEMA and OSI agreed with DOE's proposal to test LED lamps in the base-up and base-down orientations, they both recommended that DOE add language to acknowledge that for LED lamps with restricted positions, the sample only be tested in the manufacturer-specified position. (NEMA, No. 30 at p. 2; OSI, No. 32 at p. 2) NEMA also stated that this is consistent with the existing practices of ENERGY STAR. (NEMA, No. 30 at p. 2) Alternatively, Soraa recommended that DOE only test LED lamps in the base-up configuration to reduce testing burden. (Soraa, No. 28 at p. 1)

Because DOE's analysis of lamp orientation indicated that the base-up and base-down orientations represent the best (highest lumen output) and worst (lowest lumen output) case scenarios, respectively, DOE maintains its proposal that LED lamps be positioned such that an equal number of units are oriented in the base-up and base-down orientations. *See Id.* However, DOE agrees with NEMA and OSI that LED lamps with restricted positions only be tested in the manufacturer-specified position. Therefore, for an LED lamp that is developed, designed, labeled, and advertised as restricted to a particular position, DOE proposes that the lamp only be tested in the manufacturer-specified position. DOE requests comment on this proposal.

3. Test Method

a. Lumen Output Metric

DOE proposed in the June 2014 SNOPR that goniophotometers may not be used for photometric measurements. As a result, DOE proposed in the June 2014 SNOPR that the method for measuring lumen output be as specified in sections 9.1 and 9.2 of IES LM–79–2008, and proposed the same lumen output measurement method for all LED

3.2, etc. This SNOPR refers to each IES section exactly as it is referenced in the IES standard.

[8] Directional lamps must be tested in an EPA-approved fixture or directional lamps ≤ 20 watts must be tested at 45±5 degrees Celsius and directional lamps > 20 watts must be tested at 55±5 degrees Celsius.

[9] ''ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0.'' U.S. Environmental Protection Agency, August 28, 2013.

lamps, including directional [10] LED lamps. 79 FR 32027. In addition, for directional LED lamps, DOE suggested measuring total lumen output from the lamp rather than beam lumens [11] because other directional lamp technologies currently measure and report total lumen output on the FTC Lighting Facts label.

Regarding directional lamps, the Joint Comment argued that DOE should provide procedures for beam intensity measurement of LED directional lamps, as this would help determine if a lamp is distributing light effectively. It recommended that DOE reference the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 (*see supra* note 9) which specifies that the center-beam candle power and beam angle be tested for directional lamps. (Joint Comment, No. 34 at p. 2) In addition, Lighting Design Inc. provided comment that DOE should, at minimum, require reporting of center-beam candlepower and beam angle for directional lamps. More preferably, Lighting Design argued, complete photometric data such as lumen output through angles 0° to 180° and the number of planes consistent with the distribution (*e.g.,* one plane for axially symmetric distribution), should be required for directional lamps as this helps consumers, designers, and engineers more accurately compare lighting products.

Lighting Design also suggested that DOE define and provide naming conventions for the beam spread of directional lamps because manufacturer labeling is inconsistent. It argued that consumers, designers, and engineers need comprehensive definitions to compare the performance of directional lamps. (Lighting Design Inc., No. 24 at p. 1)

Because only total lumen output is needed for the ongoing GSL standards rulemaking and for the FTC Lighting Facts label, DOE is not proposing to include additional measurements for center-beam candlepower, beam angle, or any other detailed photometric measurements in this test procedure. Therefore, DOE maintains its proposal from the June 2014 SNOPR to measure the total lumen output for LED lamps, whether they are directional or omnidirectional. Measuring the total lumen output for LED lamps will enable industry and consumers to compare general service lamp products across different technologies. DOE also recognizes concerns about the naming conventions for the beam spread of directional lamps. However, developing comprehensive definitions for directional lamps is outside the scope of this rulemaking.

b. Lamp Efficacy Metric

As discussed in section I, this proposed test procedure will support any potential future energy conservation standards for general service LED lamps, which may include efficacy as a metric for setting standards. Accordingly, in the June 2014 SNOPR, DOE proposed that the efficacy of an LED lamp be calculated by dividing measured initial lamp lumen output in lumens by the measured lamp input power in watts, in units of lumens per watt. Providing a calculation for efficacy of an LED lamp does not increase testing burden because the test procedure already includes metrics for input power and lumen output. Both OSI and NEMA agreed with the DOE proposal for the efficacy calculation. (OSI, No. 32 at p. 3; NEMA, No. 30 at p. 3) However, the California Investor Owned Utilities (hereafter referred to as CA IOUs) recommended that DOE reference section 11.0 of IES LM–79–2008, which defines efficacy. (CA IOUs, No. 35 at p. 1)

While section 11.0 of IES LM–79–2008 does provide an efficacy definition and calculation, DOE proposes to continue to reference its own definition and calculation. This approach increases clarity as it specifies the calculation using the naming conventions for measured parameters established by DOE. Therefore, in this SNOPR, DOE retains the proposal that efficacy of an LED lamp be calculated by dividing measured initial lamp lumen output in lumens by the measured lamp input power in watts, in units of lumens per watt.

c. Measuring Correlated Color Temperature

In the June 2014 SNOPR, DOE proposed that the CCT of an LED lamp be calculated as specified in section 12.4 of IES LM–79–2008. *Id.* The CCT is determined by measuring the relative spectral distribution, calculating the chromaticity coordinates, and then matching the chromaticity coordinates to a particular CCT of the Planckian radiator. The setup for measuring the relative spectral distribution, which is required to calculate the CCT of the LED lamp, would be as specified in section 12.0 of IES LM–79–2008. That section describes the test method to calculate CCT using a sphere-spectroradiometer system and a spectroradiometer or colorimeter system. Furthermore, DOE also proposed in the June 2014 SNOPR to require all photometric measurements (including CCT) be carried out in an integrating sphere, and that goniophotometer systems must not be used. Therefore, DOE proposed that the instrumentation used for CCT measurements be as described in section 12.0 of IES LM–79–2008 with the exclusion of section 12.2 of IES LM–79–2008. *Id.*

DOE received comments from OSI, the Republic of Korea, and NEMA recommending reporting nominal CCT based on the tolerance specified in Table 1 of ANSI C78.377. (OSI, No. 32 at p. 4; Republic of Korea, No. 37 at p. 2; NEMA, No. 30 at p. 4) More specifically, the Republic of Korea recommended that DOE be consistent with international industry standard IEC/PAS 62612, which references ANSI C78.377 and states that nominal CCT values shall be reported. (Republic of Korea, No. 37 at p. 2) Nominal CCT values are defined by a region of the chromaticity diagram and any lamp that falls in a certain region is assigned a single CCT value. However, nominal CCT values do not address all regions of the chromaticity diagram. Although manufacturers in the marketplace may choose to design lamps that fall within regions defined by nominal CCT, DOE's goal is to establish one test method that applies to all LED lamps. Therefore, DOE is not proposing to follow a nominal CCT methodology, and is maintaining its proposal in the June 2014 SNOPR regarding the method to calculate the CCT of an LED lamp.

d. Measuring Color Rendering Index

In the June 2014 SNOPR, DOE proposed to add a requirement that the CRI of an LED lamp be determined as specified in section 12.4 of IES LM–79–2008, and to require all photometric measurements (including CRI) be carried out in an integrating sphere. *Id.* Therefore, the setup for measuring the relative spectral distribution, which is required to calculate the CRI of the LED lamp, would be as specified in section 12.0 of IES LM–79–2008 with the exclusion of section 12.2 of IES LM–79–2008, as goniophotometer systems would not be used. Section 12.4 of IES LM–79–2008 also specifies that CRI be calculated according to the method defined in the International Commission

[10] Directional lamps are designed to provide more intense light to a particular region or solid angle. Light provided outside that region is less useful to the consumer, as directional lamps are typically used to provide contrasting illumination relative to the background or ambient light.

[11] Please refer to the NOPR Test Procedures for Light-Emitting Diode Lamps (Docket No. EERE–2011–BT–TP–0071) for a detailed explanation of why DOE is not proposing to measure beam lumens for directional LED lamps (77 FR 21043; April 9, 2012).

on Illumination (CIE) 13.3–1995.[12] DOE proposed that the test procedure for LED lamps include measurement methods for CRI in order to support the upcoming general service lamps energy conservation standard rulemaking. *Id.*

DOE received many comments regarding its proposal for measuring CRI. Lighting Designs supported the DOE proposal to include requirements for measuring the CRI of an LED lamp, and additionally commented that DOE should consider adding a metric for R9.[13] Lighting Designs argued that combined, CRI and R9 data are sufficient metrics to enable consumers to assess and select a lamp product. (Lighting Design Inc., No. 23 at p. 1) Soraa provided similar comments, suggesting that R9 through R14 (*see supra* note 13) be included along with CRI in the test measurements for LED lamps. Pennsylvania State University and Jon Walker suggested that DOE not include CRI measurements in the LED lamps test procedure, and in addition to Soraa, advised that DOE adhere to the technical manual (TM) for the IES Color Metric Task Group once the industry standard comes available. (Soraa, No. 28 at p. 2; Pennsylvania State University, No. 29 at p. 2; Jon Walker, No. 25 at p. 1)

NEMA and OSI also suggested that DOE not include CRI measurements in the LED lamps test procedure. (NEMA, No. 30 at p. 3; OSI, No. 32 at p. 3) Both NEMA and OSI argued that CRI is not a necessary metric for this test procedure. (NEMA, No. 30 at p. 3; OSI, No. 32 at p. 3) NEMA further indicated that CRI should not be included in the LED lamps test procedure because this metric is not required to support the FTC labeling provisions. (NEMA, No. 30 at p. 3) In contrast, Pennsylvania State University argued that DOE should not include measurements for CRI because standards for this color rendition metric have not been updated since CIE 13.2–1974. Pennsylvania State University also commented that the limitations of CRI are well documented in academia and CIE 127–2007 provides evidence that CRI can fail to characterize visual impressions for LED lamps. (Pennsylvania State University, No. 29 at p. 2)

There are currently no industry standards that define or provide instructions for color quality metrics other than the CRI of LED lamps. After conducting thorough research of existing test procedures for all lighting products and industry literature regarding LED lamp color metrics, DOE has tentatively concluded that there is no industry consensus for how to characterize the color quality of LED lamps other than CRI. Therefore, DOE is not proposing to use metrics such as R9 through R14 to describe the color quality of LED lamps. Although industry may be working to develop new and revised standards to better define color metrics and establish test procedures for measuring this quality, the timeframe for their development is unknown. DOE reviewed the efforts of other working groups, as suggested by interested parties, but was unable to find any U.S. or international standard that provides a test procedure for measuring color quality other than the CRI procedures provided in CIE 13.3–1995. As discussed in section I, this proposed test procedure will support any potential future standards for general service LED lamps. Accordingly, in this SNOPR, DOE will not propose color quality metrics of an LED lamp other than CRI be measured in this test procedure. DOE requests comment on any industry standards or test methods that are available for measuring other color quality metrics.

C. June 2014 and Lifetime SNOPR Proposals

The methodology proposed in the June 2014 SNOPR and lifetime SNOPR to calculate time to failure for integrated LED lamps consisted of four main steps: (1) Measuring the initial lumen output; (2) operating the lamp for a period of time (the test duration); (3) measuring the lumen output at the end of the test duration; and (4) projecting time to failure using an equation adapted from the underlying exponential decay function in ENERGY STAR's most recent specification for integrated LED lamps, Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0. The June 2014 SNOPR equation projected time to failure using the test duration and the lumen maintenance at the end of the test duration as inputs, and limited time to failure claims to no more than four times the test duration. There was no minimum test duration requirement. 79 FR 32035.

DOE received many comments regarding its June 2014 SNOPR proposal for time to failure measurement and projection. DOE received comment from the Republic of Korea suggesting that DOE align its lifetime test procedure for LED lamps with that of ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0. (Republic of Korea, No. 37 at p. 2) NEMA recommended that DOE be consistent with industry standards IES–LM–80–2008 and IES–TM–21–2011, which provide measurement and projection procedures of lumen maintenance for the LED source component. (NEMA, No. 30 at p. 3) However, other commenters, including Soraa, OSI, OSRAM Opto Semiconductors, and Rensselaer Polytechnic Institute (hereafter referred to as RPI) argued that DOE should better align its lifetime test procedure with new industry standards IES LM–84–14 and IES TM–28–14 for lumen maintenance measurement and projection of time to failure of LED lamps. (Soraa, No. 28 at p. 2–3: OSI, No. 32 at p. 2–3: OSRAM Opto Semiconductors, No. 33 at pp. 1, 3–4: RPI, No. 36 at p. 1) Alternatively, Cree argued that DOE procedures for lumen maintenance should be consistent with those outlined IES–LM–80–2008 and IES–TM–21–2011, or IES LM–84–14 and IES TM–28–14. (Cree, No. 31 at p. 1)

DOE understands that industry standards represent the consensus position of industry experts, and appreciates both Cree and NEMA's proposal to reference industry standards IES LM–80–2008 and IES TM–21–2011. However, these industry standards provide lifetime measurements and projection procedures for the LED source component and not the whole LED lamp. In the June 2014 SNOPR, DOE noted that other components may cause lamp failure before the LED source falls below 70 percent of its initial light output, and therefore, it is undesirable for the lifetime of LED lamps to be approximated by the lumen maintenance of the LED source. 79 FR 32030. DOE reaffirms this position in this SNOPR. At the time of the June 2014 SNOPR publication, no industry standards were available that addressed the measurement of lumen maintenance and projection of time to failure for the complete LED lamp. However, as indicated by several comments, since the June 2014 SNOPR publication, both IES LM–84–14, and IES TM–28–14, were completed and provide a recommended method for testing lumen maintenance and projecting the time to failure of LED lamps, light engines, and luminaires.

DOE has reviewed IES LM–84–14 and IES TM–28–14 and proposes to modify its method for determining lifetime to align, where possible, with these industry standards. The revised lifetime test method proposal is described in

[12] "Method of Measuring and Specifying Colour Rendering Properties of Light Sources." Approved by CIE in 1995.

[13] R Value (R1 through R14) refers to the 14 test color samples used in comparing the color rendering of two light sources. R1 through R8 are the test color samples used to determine CRI, while R9 is one of six saturated test colors not used in calculating CRI.

section III.D.3. In particular, the lifetime projection method in IES TM–28–14 will lead to more accurate lifetime projections than the June 2014 and lifetime SNOPR proposals and ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 [14] (*see supra* note 9). IES TM–28–14 specifies a method that projects time to failure using multiple lumen maintenance measurements collected over a period of time, rather than a single measurement at the end of the test duration. Although DOE now proposes this change, DOE did receive comments on specific aspects of the June 2014 and lifetime SNOPR proposals. These comments are discussed in further detail in the following sections.

1. Definition of Lifetime and Time to Failure of Integrated Light-Emitting Diode Lamps

In the lifetime SNOPR, DOE proposed that the definition of lifetime should be revised to better align with the EPCA definition of lifetime in 42 U.S.C. 6291(30)(P). This statutory definition states that lifetime means the length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume. In addition, DOE proposed revising the name of the metric from ''lifetime,'' to ''lifetime of an integrated light-emitting diode lamp.'' DOE proposed defining the lifetime of an integrated light-emitting diode lamp to be as follows: ''the length of operating time between first use and failure of 50 percent of the sample units.'' This revision also clarified that the metric ''lifetime of an integrated light-emitting diode lamp'' is a metric calculated for all sample units collectively. 79 FR 36243.

To support the definition of lifetime as applied to LED lamps, in the lifetime SNOPR DOE also proposed to define time to failure for LED lamps. The revised definition of lifetime refers to the ''failure'' of a lamp. Because LED lamps typically exhibit gradual degradation of light output over a long period of time rather than a sudden loss of light output, lumen maintenance of 70 percent is generally accepted as a criterion of reaching the end of useful LED lamp lifetime. 79 FR 36244. Therefore, DOE proposed to treat the point in time where an individual LED lamp reaches 70 percent lumen maintenance as the point of ''failure.'' In order to calculate the lifetime of an integrated LED lamp for a particular basic model, the manufacturer must determine the length of time between first use and failure for each unit in the sample. Therefore, DOE also proposed to define time to failure, in section 2.2 of appendix BB to subpart B of 10 CFR part 430, as ''the time elapsed between first use and the point at which the lamp reaches 70 percent lumen maintenance as measured in section 4.5 of appendix BB of this subpart.'' These revisions also clarified that the metric ''time to failure'' would be measured for an individual lamp. DOE also proposed that the lifetime of an integrated LED lamp is calculated by determining the median time to failure of the sample. The median time to failure of the sample is calculated as the arithmetic mean of the time to failure of the two middle sample units when the numbers are sorted in value order. DOE requested comment on these proposed definitions and calculations of lifetime and time to failure of integrated LED lamps.

OSRAM Opto Semiconductors and the Joint Comment agreed with DOE's proposal to define time to failure as the point at which the lamp reaches 70 percent lumen maintenance. (Joint Comment, No. 34 at p. 2; OSRAM Opto Semiconductors, No. 33 at p. 4) However, DOE received comments from the Joint Comment, CA IOUs, and NEMA requesting that DOE revise its definition and calculation for lifetime of LED lamps from mean time to failure of the *middle* two samples to the mean time to failure of *all* tested samples. (Joint Comment, No. 34 at p. 2; CA IOUs, No. 35 at p. 3; NEMA, No. 30 at p. 5) The CA IOUs further commented that this definition and calculation for lifetime would allow the first 40 percent of the LED lamp sample to fail during testing and still allow for a lumen maintenance projection based on the surviving 60 percent of the sample. For this reason, according to the CA IOUs, DOE should consider calculating the lifetime of an LED lamp as the mean time to failure of all tested samples, rather than the mean time to failure of the middle two samples. The CA IOUs also commented that they understand DOE's efforts to propose a definition of lifetime that is consistent with the definition of other similar lighting products. However, they argued that other lighting products measure the sample set to the point of catastrophic failure rather than using projected lumen maintenance. For this reason, the CA IOUs suggested that it may not be appropriate to define rated life for LED lamps the same way it is defined for other technologies. (CA IOUs, No. 35 at p. 2) RPI also urged that DOE's test procedure for LED lamps require the percentage of test samples that undergo catastrophic failure, and the time period within which these failures occur, be reported and included as factors when calculating the projected lumen maintenance of the product. (RPI, No. 36 at p. 1)

DOE understands the concerns regarding the proposed definition and calculation for lifetime of LED lamps. However, in order to be consistent with the statutory definition of lifetime in 42 U.S.C. 6291(30)(P), DOE is maintaining its proposal from the lifetime SNOPR to define the lifetime of an integrated light-emitting diode lamp as ''the length of operating time between first use and failure of 50 percent of the sample units (as defined in 10 CFR 429.56(a)(1)), in accordance with the test procedures described in section 4.5 of appendix BB to subpart B of part 430 of this chapter.'' Further, DOE is only proposing measurements necessary for generating a lifetime value as defined by EPCA, and as a result is not proposing reporting the percentage of lamps that experience catastrophic failure or the time at which these failures occur.

2. Test Duration

In the June 2014 SNOPR, DOE proposed that initial lumen output is the measured amount of light that a lamp provides at the beginning of its life, after it is initially energized and stabilized using the stabilization procedures. 79 FR 32033. DOE also proposed that the period of time starting immediately after the initial lumen output measurement and ending when the final lumen output measurement is recorded is referred to as the ''test duration'' or time ''t.'' In the June 2014 SNOPR, DOE discussed that the test duration does not include any time when the lamp is not energized. If lamps are turned off (possibly for transport to another testing area or during a power outage), DOE proposed that the time spent in the off-state not be included in the test duration. DOE did not specify a minimum test duration or measurement interval, so manufacturers could customize the test duration based on the expected lifetime of the LED lamp. 79 FR 32034.

Both the CA IOUs and the Joint Comment argued that DOE should include a minimum test duration to help guard against early failure of LED lamps. (CA IOUs, No. 35 at p. 3; Joint Comment, No. 34 at p. 2) The Joint Comment also offered a suggestion that

[14] The ENERGY STAR specification for Lamps will be revised to reference the DOE LED lamp test procedure after publication of the LED lamp test procedure final rule.

minimum test duration be set at 4,000 hours. The CA IOUs expressed concern that historically test laboratories conducting lumen maintenance testing have disregarded lamps experiencing early failure. Therefore they suggested that DOE specify that the proposed lifetime test procedure is for a population of LED lamps, and not a lumen maintenance projection exercise based on the subset of lamps that have survived. (CA IOUs, No. 35 at p. 3) DOE agrees that early catastrophic failure of LED lamps is problematic. However, to render the test procedure applicable to LED lamps of all lifetimes (including lifetimes that could be less than the 4,000 hour minimum test duration recommended in the Joint Comment), DOE does not propose minimum test duration requirements for LED lamps in this SNOPR. The proposed method for lifetime testing is discussed in more detail in section III.D.3. DOE has included a proposal in section III.D.3.g detailing the required procedures if an LED lamp fails prematurely during lumen maintenance testing.

3. Test Duration Operating Conditions

The June 2014 SNOPR discussed that, while operating an LED lamp, lumen output can vary with changes in ambient temperature, air flow, vibration, and shock. However, because lamps may need to be operated for an extended period of time for the purpose of lifetime testing, DOE proposed less stringent requirements when measurements are not being taken (*e.g.,* ambient temperature and air flow) to reduce test burden. To determine ambient temperature requirements, DOE reviewed industry standard IES LM–65–10 ''Approved Method Life Testing of Compact Fluorescent Lamps.'' Section 4.3 of IES LM–65–10 requires that ambient temperature be controlled between 15 and 40 °C. Although industry standard IES LM–65–10 is intended for compact fluorescent lamps, DOE proposed that this ambient temperature range is appropriate for the operation of LED lamps. Therefore, DOE proposed that ambient temperature be maintained between 15 and 40 °C. DOE also proposed that LED lamp testing racks be open and designed with adequate lamp spacing and minimal structural components to maintain ambient temperature conditions. Furthermore, similar to the requirements in section 4.2 of IES LM–65–10, DOE proposed minimizing airflow surrounding the LED lamp testing racks and that the lamps not be subjected to excessive vibration or shock. These requirements would minimize the impact of airflow and the physical environment while minimizing test burden. 79 FR 32034.

Several stakeholders commented that DOE should tighten its proposal for ambient temperature requirements. Both the CA IOUs and the Joint Comment recommended tightening the ambient temperature requirements during lumen maintenance testing to 25 °C with a tolerance of ± 5 °C. (CA IOUs, No. 35 at p. 3; Joint Comment, No. 34 at p. 2) The CA IOUs argued that the lower end of DOE's proposed range (15 °C) is significantly cooler than room temperature, and therefore, not an accurate representation of the operating conditions of most LED lamps. Additionally, it argued that the wide range between 15 and 40 °C could result in wildly different lamp performance measurements. (CA IOUs, No. 35 at p. 3) Similarly, RPI also recommended that DOE consider testing LED lamps at the higher end of the proposed temperature range in more tightly controlled tolerances, specifically at 30 °C with a tolerance of ± 5 °C. (RPI, No. 36 at p. 1) NEMA commented that DOE should continue to reference IES LM–65–10, and not reference IES LM–84–14 because industry has not yet had time to gain familiarity with the new IES LM–84–14 standard. NEMA further commented that DOE should simplify the temperature range in IES LM–65–10 by setting the ambient temperature to ''15 °C or above.'' (NEMA, No. 30 at p. 2)

DOE agrees that the ambient temperature tolerance of between 15 and 40 °C is large, but notes that in the June 2014 SNOPR, DOE based this range on Section 4.3 of IES LM–65–10. As previously mentioned, for this SNOPR, DOE has developed a test procedure that references the industry standards IES LM–84–14 and IES TM–28–14. Therefore, DOE no longer proposes the ambient temperature conditions provided in Section 4.3 of IES LM–65–10. This SNOPR instead proposes to adopt section 4.4 of IES LM–84–14, which indicates that during lumen maintenance testing the ambient temperature shall be maintained at 25 °C ± 5 °C. These requirements are discussed in more detail in section III.D.1. Regarding industry familiarity with IES LM–84–14, DOE expects that the compliance date of the test procedure final rule (see section III.L) will provide adequate time for gaining familiarity and conducting the adopted test procedure for LED lamps.

4. Stress Testing

The Joint Comment, CA IOUs, and RPI recommended that DOE should not only consider test procedures for lumen maintenance, but also for the possibility of catastrophic failure as measured through stress testing. (Joint Comment, No. 34 at p. 2; CA IOUs, No. 35 at p. 4; RPI, No. 36 at p. 2) The CA IOUs argued that DOE should consider utilizing an additional elevated temperature test, and/or other stress tests, because heat buildup and other factors such as rapid cycling will likely have a significant impact on component failure of integrated LED lamps. Furthermore, the CA IOUs indicated that stress-test procedures are already included in the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 (*see supra* note 9), and therefore would not represent additional testing burden to manufacturers. (CA IOUs, No. 35 at p. 4) RPI also recommended that DOE require on-off cycling at realistic operating intervals (*e.g.,* a minimum of two-hours on and two-hours off), claiming that this could potentially damage subcomponents within the LED lamp. RPI argued that this cycling method would allow lamp components to experience maximum temperature differences and undergo stresses similar to what they would experience in real-life applications. (RPI, No. 36 at p. 2)

Industry has stated that unlike other lighting technologies, the lifetime of LED lamps is minimally affected by power cycling.[15] DOE research of existing literature and industry test procedures indicates none are available that use rapid-cycle stress testing to predict the failure of the complete LED lamp. In this SNOPR, DOE proposes to retain the testing conditions that LED lamps operate without rapid-cycle stress testing. DOE requests comment on whether standardized test methods exist that use rapid-cycle stress testing to predict the failure of integrated LED lamps.

The Joint Comment also requested that if DOE does not include procedures for stress testing of LED lamps that DOE not preclude the U.S. Environmental Protection Agency (EPA) from requiring stress testing for the purposes of the ENERGY STAR program. (Joint Comment, No. 34 at p. 2) While DOE understands the issue raised in the Joint Comment, DOE is not addressing procedures for stress testing of LED lamps in the context of the present rulemaking.

[15] NEMA Comments on ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0, Draft 2 *http://energystar.gov/products/specs/sites/products/files/NEMA.pdf.*

5. Color Maintenance

In addition to including lumen maintenance in DOE's lifetime test procedure, Soraa also requested that DOE measure and report color maintenance of LED lamps using the procedures described in IES LM–84–14. (Soraa, No. 28 at p. 2) Color maintenance is the difference or ''shift'' in chromaticity as measured initially compared to that over an elapsed operating time, and color shift and other degradation mechanisms can affect the useful lifetime of LED lamps. While color maintenance measurement procedures are provided in IES LM–84–14, no method for projection is provided. Furthermore, color maintenance is not well understood or well-studied, and is not commonly used for traditional incandescent lamps and CFLs.[16] After conducting thorough research of existing test procedures for all lighting products and industry literature regarding LED lamp lifetime, DOE has tentatively concluded that there is no industry consensus for how to characterize lifetime of LED lamps in terms of performance metrics other than lumen maintenance. Therefore, DOE is not proposing to use metrics such as color maintenance to determine the lifetime of LED lamps.

D. Proposed Approach for Lifetime Measurements

As discussed in section III.C.1, DOE previously had proposed to define the time to failure of an LED lamp as the time required to reach a lumen maintenance of 70 percent (L_{70}). 79 FR 36243. Lumen maintenance is the measure of lumen output after an elapsed operating time, expressed as a percentage of the initial lumen output. In this SNOPR, DOE proposes a new test procedure for measuring and projecting the lifetime of LED lamps that addresses many of the stakeholder concerns (discussed in the preceding sections) regarding the June 2014 and lifetime SNOPR proposals. This new proposal is largely based on the IES LM–84–14 and IES TM–28–14 industry standards, and provides a simple, straightforward, and flexible test procedure.

IES LM–84–14 provides a method for lumen maintenance measurement of integrated LED lamps that specifies the operational and environmental conditions during testing such as operating cycle, ambient temperature, airflow, and orientation. IES TM–28–14 provides methods for projecting the lumen maintenance of integrated LED lamps depending on the available data and test duration. These requirements, and any modifications proposed by DOE, are further discussed in the sections III.D.1 through III.D.4. DOE requests comment on the proposed incorporation of IES LM–84–14 and IES TM–28–14 for measuring and projecting the lumen maintenance of LED lamps.

1. Test Conditions

DOE proposes that the operating conditions for lamp operation between lumen output measurements be as specified in section 4.0 of IES LM–84–14, with some modifications. Lumen output of LED lamps can vary with changes in ambient temperature and air movement around the LED lamp. However, to reduce test burden, DOE proposes that the operating conditions (*e.g.,* ambient temperature) required during the test duration while measurements are not being taken would be less stringent than those required when taking photometric measurements. The test conditions outlined in IES LM–84–14 ensure reliable, repeatable, and consistent test results without significant test burden. These conditions are discussed in further detail below.

DOE proposes to include section 4.1 of IES LM–84–14, which specifies that LED lamps should be checked and cleaned prior to lumen output measurement and maintenance testing, and further states that unusual environmental conditions, such as thermal interference from heating, ventilation and air conditioning systems or solar loading, are to be reduced to levels reasonably expected to minimize influence. DOE also proposes to include section 4.2 of IES LM–84–14, which states the lamp should be mounted in accordance with manufacturer specifications. In addition, DOE proposes to include section 4.4 of IES LM–84–14, which specifies that photometric measurements should be taken at an ambient temperature of 25 ± 5 °C. A tolerance of 5 °C for the ambient temperature during lumen maintenance testing is practical, limits the impact of ambient temperature, and is not burdensome. Section 4.4 of IES LM–84–14 also indicates that the temperature variation of the operating environment shall be monitored with a sufficient number of and appropriately located temperature measurement points, and that the sensors used for measurements must be shielded from direct optical radiation from the lamp or any other source to reduce the impact of radiated heat on the ambient temperature measurement. Section 4.4 of IES LM–84–14 further states that if the ambient temperature falls outside the allowed range, the lumen maintenance test shall be terminated. This setup for measuring and controlling ambient temperature would result in appropriate testing conditions as the lamp would be tested at room temperature and in an environment that is used most commonly for testing lamp technologies.

DOE proposes that the requirement for vibration and air movement around the LED lamp be as specified in sections 4.3 and 4.6 of IES LM–84–14, which require that the LED lamps not be subjected to excessive vibration or shock during operation or handling, and that the air flow surrounding the LED lamp be minimized. This is a requirement in relevant industry standards for the test setup of other lamp types such as GSFLs, and would ensure consistent LED lamp measurements. DOE also proposes that humidity of the environment around the LED lamp shall be maintained to less than 65 percent relative humidity during the lumen maintenance test as specified in section 4.5 of IES LM–84–14.

DOE requests comment on the proposal to reference section 4.0 of IES LM–84–14 for specifying the ambient conditions for lumen maintenance testing of LED lamps.

2. Test Setup

In this SNOPR, DOE proposes test setup requirements for determining lifetime. Power supply, test rack wiring, electrical settings, and operating orientation are discussed in sections III.D.2.a through III.D.2.d.

a. Power Supply

DOE proposes that line voltage waveshape and input voltage of AC power supplies be as specified in sections 5.2 and 5.4 of IES LM–84–14, respectively. Section 5.2 specifies that an AC power supply shall have a sinusoidal voltage waveshape at the input frequency required by the LED lamp such that the RMS summation of the harmonic components does not exceed 3.0 percent of the fundamental frequency while operating the LED lamp. Section 5.4 requires, in part, that the voltage of an AC power supply (RMS voltage) applied to the LED lamp shall be less than or equal to 2.0 percent of the rated RMS voltage. Lastly, DOE proposes to not reference section 5.3 of IES LM–84–14, which provides line impedance guidelines, because the procedures are listed as optional by IES and lack specific line impedance

[16] U.S. Department of Energy, ''*LED Luminaire Lifetime: Recommendation for Testing and Reporting,*'' June 2011. *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/led_luminaire-lifetime-guide_june2011.pdf*

restrictions. DOE invites comments on the proposal to reference section 5.2 of IES LM–84–14 requirements for AC power supplies, and on the requirement that input voltage be monitored and regulated to less than or equal to 2.0 percent of the rated RMS voltage as specified in section 5.4 of IES LM–84–14. DOE also invites comments on the proposal to not reference the line impedance guidelines provided in section 5.3 of IES LM–84–14.

b. Test Rack Wiring

DOE proposes that section 5.5 of IES LM–84–14 be incorporated by reference to specify test rack wiring requirements during lumen maintenance testing of LED lamps. This section specifies that that wiring of test racks should be in accordance with national, state or provincial, and local electrical codes, and in accordance with any manufacturer operation and condition recommendations for the LED lamp. This section also requires that an inspection of electric contacts including the lamp socket contacts be performed each time the LED lamps are installed in the test rack. DOE invites comments on the proposal to adopt section 5.5 of IES LM–84–14, which provides test rack wiring requirements during lumen maintenance testing of LED lamps.

c. Electrical Settings

DOE proposes requiring lumen maintenance testing of LED lamps at the rated voltage as specified in section 5.1 of IES LM–84–14. For lamps with multiple operating voltages, DOE proposes the electrical settings requirements provided in section III.C.3.d of the June 2014 SNOPR. 79 FR 32025–6. For LED lamps with multiple modes of operation, DOE proposes incorporating section 7.0 of IES LM–79–2008, which specifies that dimmable LED lamps should be tested at maximum input power. When multiple modes (such as multiple CCTs and CRIs) occur at the maximum input power, DOE proposes that the manufacturer can select any of these modes for testing. For certification, DOE proposes that all measurements (lumen output, input power, efficacy, CCT, CRI, power factor, lifetime, and standby mode power) be conducted at the same mode of operation.

d. Operating Orientation

DOE proposes to include section 4.7 of IES LM–84–14, which specifies that the operating orientation of the lamp be the same as during photometric measurement. Lamp operating orientation during photometric measurement is discussed in section III.B.2.

3. Test Method

DOE proposes that the lumen maintenance test procedure for LED lamps be as specified in section 7.0 of IES LM–84–14 and section 4.2 of IES TM–28–14. The test methods outlined in IES LM–84–14 and IES TM–28–14 ensures reliable, repeatable, and consistent test results without significant test burden. The lumen maintenance test method is discussed in further detail in sections III.D.3.a through III.D.3.g. DOE requests comment on the lumen maintenance test procedure.

a. Initial Lumen Output Measurements

DOE proposes to reference section 7.6 of IES LM–84–14, which states that an initial lumen output measurement is required prior to starting the maintenance test. Initial lumen output is the measured amount of light that an LED lamp provides at the beginning of its life after it is initially energized and stabilized using the stabilization procedures proposed in section III.C.4.b of the June 2014 SNOPR. 79 FR 32027. The methodology, test conditions, and setup requirements described in the June 2014 SNOPR (with the modifications described in section III.B above) would be used when measuring initial lumen output for the lifetime test procedure. Manufacturers testing an LED lamp for lifetime would be required to use the same value of initial lumen output as used in the lamp efficacy calculation.

b. Interval Lumen Output Measurements

DOE also proposes to reference section 7.6 of IES LM–84–14 to indicate that additional lumen output measurements (known as interval lumen output measurements) are made after the initial lumen output measurement and continue at regular intervals. Interval lumen output is measured after the lamp is energized and stabilized using the stabilization procedures in section III.C.4.b of the June 2014 SNOPR. 79 FR 32027. The methodology, test conditions, and setup requirements described in the June 2014 SNOPR (with the modifications described in section III.B above) would be required when measuring interval lumen output for the lifetime test procedure. Further instructions specifying the timing of the collection of interval lumen output measurements are discussed in section III.D.4.a.

c. Test Duration

During lumen maintenance testing, the LED lamps must operate for an extended period of time, referred to as the ''elapsed operating time.'' The entirety of elapsed operating time starting immediately after the initial lumen output measurement and ending with the recording of the final interval lumen output measurement is then referred to as the ''test duration.'' The test duration does not include any time when the lamp is not energized. If lamps are turned off (possibly for transport to another testing area or during a power outage), DOE proposes that the time spent in the off state not be included in the test duration. Similar to the June 2014 SNOPR, DOE does not specify minimum test duration requirements, so manufacturers can customize the test duration based on the expected lifetime of the LED lamp. However, DOE understands that the test duration has a significant impact on the reliability of the lumen maintenance prediction and proposes maximum time to failure claims that increase as the test duration increases. These lumen maintenance calculation requirements are discussed further in section III.D.4.

d. Lamp Handling and Tracking

Section 7.2 of IES–LM–84–14 specifies that when handling, transporting, or storing LED lamps, care should be taken to prevent any damage or contamination that may affect the test results. These handling requirements are practical, prevent lamp damage that could affect the measured results, and would not be burdensome to manufacturers.

DOE also proposes that the requirements for LED lamp marking and tracking during lumen maintenance testing be as specified in section 7.3 of IES–LM–84–14. Section 7.3 of IES–LM–84–14 specifies that each LED lamp shall be tracked during the maintenance test and identified by marking applied directly to the LED lamps or by labels that can be attached during transport, operation and evaluation or to the test rack position occupied by the LED lamp. The chosen identification method should also consider the effect of exposure to light and heat, as this may alter or compromise the marking or label. Section 7.3 of IES–LM–84–14 also offers several possible marking methods and materials, including durable bar coding, ceramic ink marking, high-temperature markers, or any other method that endures or can be periodically renewed for the duration of the test. These requirements ensure that the LED lamp can be tracked and

identified correctly throughout lumen maintenance testing. DOE requests comment on the lamp handling and tracking proposal.

e. Operating Cycle

Lifetime test procedures for other lamp types sometimes require ''cycling,'' which means turning the lamp on and off at specific intervals over the test period. However, industry has stated that unlike other lighting technologies, the lifetime of LED lamps is minimally affected by power cycling (*see supra* note 15). Thus, in this SNOPR, DOE proposes that cycling of the LED lamp not be required during lumen maintenance testing.

f. Time Recording

Accurately recording of the elapsed operating time is critical for the lumen maintenance test procedure. Therefore, DOE proposes to adopt section 7.5 of IES LM–84–14, which states that elapsed time recording devices shall be connected to the particular test positions and accumulate time only when the LED lamps are operating. The LED lamp is operating only when the lamp is energized. If lamps are turned off (possibly for transport to another testing area or during a power outage), DOE proposes that the time spent in the off state not be included in the recorded elapsed operating time. Section 7.5 of IES LM–84–14 also indicates that video monitoring, current monitoring, or other means can be used to determine elapsed operating time. All equipment used for measuring elapsed operating time would be calibrated and have a total minimum temporal resolution of ±0.5 percent. These requirements are achievable with minimal testing burden and provide reasonable stringency that is achievable via commercially available time recording instrumentation. DOE requests comment on the time recording proposal.

g. Lamp Failure

Finally, DOE also proposes that LED lamps be checked regularly for failure as specified in section 7.8 of IES–LM–84–14, which requires that checking for LED lamp operation either by visual observation or automatic monitoring be done at a minimum at the start of lumen maintenance testing and during every interval measurement. Section 7.8 of IES LM–84–14 further specifies that each non-operational LED lamp shall be investigated to make certain that it is actually a failure, and that it is not caused by improper functioning of the test equipment or electrical connections. DOE proposes that if lumen maintenance of the LED lamps is measured at or below 0.7 or an LED lamp fails resulting in complete loss of light output, time to failure has been reached and therefore it must not be projected using the procedures described in the following section III.D.4. Instead, the time to failure is equal to the last elapsed time measurement for which the recorded lumen output measurement is greater than or equal to 70 percent of initial lumen output. DOE requests comment on this proposal.

4. Projection Method

In this SNOPR, DOE proposes a new lumen maintenance projection procedure that addresses many of the stakeholder concerns discussed in section III.C regarding the June 2014 and lifetime SNOPR proposals. This proposal is largely based on the IES TM–28–14 industry standard and provides a simple, straightforward, and flexible calculation based on the recorded trend in lumen maintenance of an LED lamp. However, DOE is proposing certain modifications, discussed below, so that the projection method better meets DOE's needs.

a. Interval Lumen Output Measurement Collection Instructions

In this SNOPR, DOE proposes that all interval lumen output measurements meet the requirements specified in section 4.2, 4.2.1, and 4.2.2 of IES TM–28–14. For test durations greater than or equal to 6,000 hours, DOE proposes that section 4.2.1 of IES TM–28–14 be followed. Section 4.2.1 of IES TM–28–14 specifies that lumen maintenance data used for direct extrapolation must be collected initially and at least once every 1,000 hours thereafter. For test durations greater than or equal to 3,000 hours and less than 6,000 hours, DOE proposes section 4.2.2 of IES TM–28–14 be followed, except that lumen maintenance data of LED packages and modules would not be collected. Section 4.2.2 of IES TM–28–14 specifies that lumen maintenance data used for combined extrapolation must be collected initially after 1,000 hours, and at least once every 500 hours thereafter.

Lumen maintenance data collected at intervals greater than those specified above must not be used as this may compromise the accuracy of the projection results. In addition, section 4.2 of IES TM–28–14 indicates that lumen maintenance data shall be collected within a ±48 hour window of each measurement point, *e.g.,* for 1000-hour intervals, between 952 hours and 1048 hours, between 1952 and 2048 hours, etc. This ±48 hour data collection window is also applicable to other intervals smaller than 1,000 hours. Furthermore, section 4.2 specifies that lumen maintenance data used for the projection calculation shall be equally dispersed in time (to within ±48 hours), and that no two consecutive data collection intervals after the initial 1,000 hours shall differ by more than 96 hours in length. Therefore, data may be used in the projection calculation if they are collected every 1,000 hours (±48 hours), every 500 hours (±48 hours), etc., but not every 1,000 hours and occasionally at 500 hours, as this will give excessive statistical weight to certain data points. DOE requests comment on adopting the proposed lumen maintenance data collection requirements specified in section 4.2 of IES TM–28–14.

b. Projection Calculation

Section 5.0 of IES TM–28–14 provides guidance for how to determine time to failure for an integrated LED lamp. For short test durations (less than 3,000 hours), IES TM–28–14 does not provide a projection method so time to failure is determined using actual test data. For test durations of 3,000 hours or greater, IES TM–28–14 provides two different methods for projecting time to failure, depending on test duration. The first is a direct extrapolation method for projecting time to failure based on lumen maintenance data of a whole LED lamp. The second is a combined extrapolation method based on both whole LED lamp and LED source lumen maintenance data. DOE discusses these provisions of IES TM–28–14 in more detail in this section.

IES TM–28–14 does not provide a lumen maintenance projection method if IES LM–84–14 testing has been completed for a total elapsed operating time of less than 3,000 hours. IES TM–28–14 indicates that the prediction may be unreliable since the spread of prediction estimates increases significantly for data sets that do not meet the minimum test duration requirements for the either the direct or combined extrapolation methods. On the basis of the limited dataset potentially yielding unreliable projections, DOE proposes no projection of time to failure for test durations less than 3,000 hours. Instead, time to failure would equal the test duration.

For test durations of at least 6,000 hours, the IES TM–28–14 procedures recommend use of a direct extrapolation method. The direct extrapolation method uses an exponential least squares curve-fit to extrapolate lumen maintenance measurements of the complete integrated LED lamp to the time point where lumen maintenance

decreases to 70 percent of its initial lumen output.

The direct extrapolation method described in section 5.1 of IES TM–28–14 for projecting time to failure based on lumen maintenance data of a whole LED lamp is similar to DOE's June 2014 SNOPR proposal. 79 FR 32035. However, where DOE's June 2014 SNOPR projected time to failure based on the underlying exponential decay function in ENERGY STAR's Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0, IES TM–28–14 projects time to failure based on the data obtained for each individual LED lamp. Thus, DOE proposes to incorporate the direct extrapolation method provided in section 5.1 of IES TM–28–14, as this should result in more accurate projections.

While DOE proposes referencing the direct extrapolation method specified in section 5.1 of IES TM–28–14 for projecting time to failure of LED lamp lumen maintenance data (tested as described in sections III.D.1 through III.D.3), this SNOPR also proposes the following modification for consistency with DOE's reporting requirements. Measured lumen maintenance data of all the LED lamp samples must not be averaged, and the averaging procedures specified in section 5.1.2 of IES TM–28–14 shall not be used. DOE proposes that the projection calculation be completed for each individual LED lamp and the projected time to failure values be used to calculate the lifetime of the sample using the procedures proposed in section III.G.3.

If at least 3,000 hours but less than 6,000 hours of whole-lamp lumen maintenance data is available, IES TM–28–14 recommends a combined extrapolation method. This method uses IES TM–21–2011 to project the data collected from IES LM–80–2008, which measures lumen maintenance of the LED source component. This method then corrects for additional lumen maintenance losses in the complete integrated LED lamp, if they are observed during whole-lamp testing.

DOE proposes not to reference the combined extrapolation method described in section 5.2 of IES TM–28–14 for when at least 3,000 hours, but less than 6,000 hours, of whole-lamp lumen maintenance test data are available. The requirement to use lumen maintenance data of the LED source component would require disassembly of the lamp, which could necessitate irreversible modifications to the lamp and introduce potential for error and variation in the measurements. Furthermore, failure of an integrated LED lamp is often determined by components other than the LED source, as many stakeholders described in comments to the NOPR test procedure. 79 FR 32030.

In place of the combined extrapolation method for test durations of at least 3,000 hours but less than 6,000 hours, DOE proposes to use the direct extrapolation method specified in section 5.1 of IES TM–28–14 but to lower the maximum allowed time to failure claim. Section 5.1.5 of IES TM–28–14 provides instruction for how to limit time to failure claims depending on sample size. Because DOE requires a sample size of a least ten LED lamps, the projected time to failure, as specified in Table 1 in section 5.1.5 of IES TM–28–14, would be limited to no more than six times the test duration for test durations greater than or equal to 6,000 hours. However, to account for the increased uncertainty in lowering the threshold for the direct extrapolation method to 3,000 hours, DOE proposes to reduce the maximum time to failure claims based on the test duration. For this test duration range, DOE proposes a maximum projection limit that scales linearly from one times the test duration (the effective limit for test durations less than 3,000 hours) to approximately six times the test duration (the limit for test durations greater than or equal to 6,000 hours).

In summary, DOE proposes to determine time to failure using the following procedures:

(1) If the test duration is less than 3,000 hours:

No projection of lumen maintenance data is permitted, and the time to failure claim equals the test duration or the recorded time at which the lamp reaches 70 percent lumen maintenance, whichever is of lesser value. See section III.D.3.g for more details on how lamp failure is recorded during lumen maintenance testing.

(2) If the test duration is greater than or equal to 3,000 and less than 6,000 hours:

The direct extrapolation method specified in section 5.1 of IES TM–28–14 may be utilized. The maximum time to failure claim is determined by multiplying the test duration by the limiting multiplier calculated in the following equation:

$$Limiting\ multiplier = \frac{1}{600} * test\ duration - 4$$

Where:

Test duration is expressed in hours

This equation is a linear function that equals one when the test duration is equal to 3,000 hours and six at 6,000 hours. As an example, if an LED lamp is tested for 4,500 hours, the maximum time to failure that could be reported based on this approach is only 15,750 hours (3.5 times the test duration of 4,500 hours). The limiting multiplier increases as the test duration increases until the test duration equals or exceeds 6,000 hours where it is set and remains at a value of six.

(3) If the test duration is greater than or equal to 6,000 hours:

The direct extrapolation method specified in section 5.1 of IES TM–28–14 may be utilized. The projected time to failure is limited to no more than six times the test duration.

DOE requests comment on referencing the direct extrapolation method specified in section 5.1 of IES TM–28–14 for projecting time to failure of LED lamps. DOE also seeks comment on the proposed modifications to project time to failure of each individual lamp (no averaging lumen maintenance values), lowering the test duration threshold to 3,000 hours for the direct extrapolation method, and the procedures for limiting the maximum time to failure claim.

E. Proposed Approach for Standby Mode Power

As explained in the June 2014 SNOPR, EPCA section 325(gg)(2)(A) directs DOE to establish test procedures to include standby mode, ''taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. . . .'' (42 U.S.C. 6295(gg)(2)(A)) IEC Standard 62087 applies only to audio, video, and related equipment, but not to lighting equipment. As IEC Standard 62087 does not apply to this rulemaking, in the June 2014 SNOPR, DOE proposed procedures consistent with those outlined in IEC Standard 62301, which applies generally to household electrical

appliances. 79 FR 32035. However, to develop a test method that would be familiar to LED lamp manufacturers and maintain consistent requirements to the active mode test procedure, DOE referenced language and methodologies presented in IES LM–79–2008 for test conditions and test setup requirements.

In the June 2014 SNOPR, DOE noted that a standby mode power measurement is an input power measurement made while the LED lamp is connected to the main power source, but is not generating light (an active mode feature). DOE proposed in the June 2014 SNOPR that all test condition and test setup requirements used for active mode measurements (*e.g.,* input power) (see sections III.B.1 and III.B.2) also would apply to standby mode power measurements. Once the test conditions and setup have been implemented, the LED lamp would be stabilized in accordance with the requirements given for active mode measurements in the June 2014 SNOPR. After the lamp has stabilized, the technician would send a signal to the LED lamp instructing it to provide zero light output. The technician would then measure standby power in accordance with section 5 of IEC 62301. *Id.*

NEMA commented that requiring lumen output measurements to determine stability of standby mode operation is not necessary, and that electrical stabilization in the standby mode should be sufficient. (NEMA, No. 30 at p. 4) For standby mode, DOE is proposing to measure the power consumed, not the light output (light output is zero in standby mode by definition). Therefore, DOE agrees that requiring lumen output measurements to determine stability of standby mode operation is not necessary. Thus, DOE is revising the procedures for purposes of standby mode power measurement, and proposes that, once test conditions and setup have been implemented, the stabilization procedures in section III.C.4.b of the June 2014 SNOPR are required for input power only, not lumen output. 79 FR 32027. DOE requests comment on the proposal to determine stabilization for standby mode measurements using power measurements only.

NEMA also recommended that DOE revise its proposal in the June 2014 SNOPR to state that standby mode power measurements may be taken before or after active mode operation. NEMA reasoned that if stabilization of the light output of the lamp was not a necessary element of the stabilization procedure for standby mode measurements, that the sequence of standby and active mode measurements would not affect the measured values. (NEMA, No. 30 at p. 4) DOE agrees that the sequence of standby mode and certain active mode measurements should not affect the measured values. However, DOE does propose that standby mode measurements be completed before initiating lumen maintenance testing for determining time to failure. Therefore, DOE proposes to clarify that standby mode measurements may be taken before or after active mode measurements of lumen output, input power, CCT, CRI, power factor, and lamp efficacy, but must be taken before the active mode measurement of and calculation of time to failure.

F. Proposed Approach for Power Factor

DOE proposes to include a power factor measurement requirement, because power quality can impact energy consumption. Power factor is a dimensionless ratio of real power to apparent power, where real power is the measured input power of the LED lamp and apparent power is equal to the product of measured input current and input voltage. Power factor is not described directly in IES LM–79–08, but the instrumentation for measuring the values necessary for calculating power factor is specified.

DOE proposes to calculate power factor in this SNOPR by dividing input power by the product of input current and input voltage. Input power would be measured as proposed in the June 2014 SNOPR. 79 FR 32028. Following seasoning and stabilization, input current and input voltage to the LED lamp would be measured using the instrumentation specified in section 8.0 of IES LM–79–08. Input current and input voltage would be measured using the same test conditions and test setup as for lumen output, lamp efficacy, CCT, and CRI as proposed in the June 2014 SNOPR (79 FR 32023–26) and sections III.B.1 and III.B.2 of this SNOPR. DOE requests comment on the method of measuring and calculating power factor.

G. Basic Model, Minimum Sample Size, and Determination of Represented Values

1. Basic Model

In the June 2014 SNOPR, DOE proposed to revise the term ''basic model'' in 10 CFR 430.2 for LED lamps as follows: ''With respect to integrated light-emitting diode lamps: Lamps that have essentially identical light output and electrical characteristics—including lumens per watt (lm/W), color rendering index (CRI), correlated color temperature (CCT), and lifetime.'' 79 FR 32036. In their written comments, both OSI and NEMA agree with the revision to the definition of ''basic model.'' (OSI, No. 32 at p. 3; NEMA, No. 30 at p. 3) However, the Republic of Korea commented on DOE's definition that requires that manufacturers test the entire basic model, and that this may become burdensome particularly for lifetime testing. Therefore, it recommended that DOE align the basic model definition with that of the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0, which requires a lifetime test only on representative model regardless of color temperature. (Republic of Korea, No. 37 at p. 2)

Upon further review, DOE determined that a revised definition of basic model specific to integrated LED lamps is not currently necessary for the general service lamp energy conservation rulemaking (see public docket EERE–2013–BT–STD–0051) and that LED lamps with different CCT, CRI, or lifetime could be categorized as the same basic model. All products included in a basic model must comply with the certified values, and products in the same basic model must also have the same light output and electrical characteristics (including lumens per watt) when represented in manufacturer literature. DOE requests comment on this revised proposal.

2. Minimum Sample Size

The June 2014 SNOPR proposed testing a minimum of ten LED lamps to determine the input power, lumen output, efficacy, CCT, CRI, lifetime, and standby mode power. DOE also proposed that all LED lamps within the sample, including those that fail prematurely, be included in the reported results for input power, lumen output, efficacy, CCT, CRI, lifetime, and standby mode power. LED lamp failure should not be exempt from reporting, because this would potentially mislead consumers. Furthermore, DOE proposed that sample units be randomly selected from production units. 79 FR 32036.

DOE determined that a minimum of ten LED lamps was appropriate, based on collected photometric test data from two sources: the first data set was provided by ENERGY STAR, and the second from a collaborative effort between Pacific Gas and Electric Company (hereafter referred to as PG&E), California Lighting Technology Center (hereafter referred to as CLTC), and the Collaborative Labeling and Appliance Standards Program (hereafter referred to as CLASP). These test data, combined, represent ten samples of 47 different LED lamp products each.

Statistical analysis of the LED lamp test data indicated that a minimum sample size of ten lamps is appropriate to estimate the average input power, initial lumen output, efficacy, CCT, and CRI given the variation present in the data set. Standby mode power is assumed to vary to the same degree as input power during active mode. In addition, 37 LED lamps from the data set were tested for lumen output after 3,000 hours of operation. DOE used this data to help determine the sample size required for estimating the lifetime of the LED lamp. Analysis of the test data revealed that a minimum sample size of ten should also be sufficient to estimate lumen output for the LED lamp after an elapsed operating time. In addition, requiring a minimum sample size of ten LED lamps aligns with ENERGY STAR's sampling procedure. *Id.*

Regarding the minimum sample size proposal, the Joint Comment and NEMA agreed with DOE's proposal to adopt a minimum sample size of ten LED lamps for input power, lumen output, CCT, CRI, lifetime, and standby mode. (Joint Comment, No. 34 at p. 1; NEMA, No. 30 at p. 3) In contrast, OSI and OSRAM Opto Semiconductors commented that in the industry standard IES TM–28–14, sample size affects the confidence level for lumen output maintenance projection. They, therefore, recommend that DOE adopt the sample size and associated projection time length in IES TM–28–14. (OSI, No. 32 at p. 3; OSRAM Opto Semiconductors, No. 33 at p. 4)

DOE maintains its proposal to require a sample size of at least ten LED lamps. As specified in section III.D.4.a, DOE proposes referencing Table 1 in section 5.1.5 of IES TM–28–14, which states that the projected time to failure is limited to no more than six times the test duration for sample sizes greater than or equal to ten. However, to account for the increased uncertainty in lowering the threshold for the direct extrapolation method to 3,000 hours, DOE proposes to reduce the maximum time to failure claims for test durations less than 6,000 hours, as discussed in section III.E.4.b. Therefore, DOE retains the proposal that a minimum of ten LED lamps must be tested to determine the input power, lumen output, efficacy, CCT, CRI, lifetime, and standby mode power. DOE also proposes that a minimum of ten LED lamps must be tested to determine power factor.

Regarding inclusion of all 10 lamps in the reported results, NEMA commented that DOE should follow the current practice of the ENERGY STAR lamps specification v1.1 and allow for early failure for one of ten samples. That is, one of the ten samples could be excluded from calculation of lumen maintenance and any projected values. NEMA cited reduced regulatory burden as a benefit to harmonizing DOE's test procedure with ENERGY STAR. (NEMA, No. 39 at p. 1) DOE's view has not changed from the June 2014 SNOPR and is that LED lamp failure should not be exempt from reporting, because this would potentially mislead consumers, particularly with respect to lamp lifetime. DOE will work with ENERGY STAR to harmonize its test procedure with that proposed here, including sampling and sample size.

3. Determination of Represented Values

In the June 2014 SNOPR, DOE proposed calculations to determine represented values for CCT, lumen output, lifetime, CRI, and efficacy using a lower confidence limit (LCL) equation, and input power and standby mode power using an upper confidence limit (UCL) equation. 79 FR 32037. LED lamp test data provided by ENERGY STAR as well as PG&E, CLASP, and CLTC were used to derive the confidence level and sample mean divisor for each metric. Descriptions of each of the LCL and UCL calculations are provided below.

DOE proposed in the June 2014 SNOPR that the CCT of the units be averaged and that average be rounded as specified in the June 2014 SNOPR. 79 FR 32038. The average CCT would be calculated using the following equation:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

where, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit.

DOE proposed in the June 2014 SNOPR that the represented value of lumen output be equal to or less than the lower of the average lumen output of the sample set and the 99 percent LCL of the sample mean divided by 0.97. Additionally, DOE proposed that the represented value of CRI be equal to the lower of the average CRI of the sample set and the 99 percent LCL of the sample mean divided by 0.99, and that the represented value of efficacy be equal to the lower of the average efficacy of the sample set and the 99 percent LCL of the sample mean divided by 0.98. DOE proposed the following equation to calculate LCL for lumen output, CRI, and efficacy:

$$LCL = \bar{x} - t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

where, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n-1 degrees of freedom.

DOE also proposed in the June 2014 SNOPR that the represented value of input power and standby mode power be equal to or greater than the greater of the average lumen output of the sample set and the 99 percent UCL of the sample mean divided by 1.01. DOE proposed the following equation to calculate UCL:

$$UCL = \bar{x} + t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

where, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n-1 degrees of freedom.

Additionally in the lifetime SNOPR, DOE proposed that the definition of lifetime should be revised to better align with the EPCA definition of lifetime in 42 U.S.C. 6291(30)(P). 79 FR 36243. Therefore, as described in section III.C.1, DOE added that the lifetime of an integrated LED lamp is calculated by determining the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units when the numbers are sorted in value order). All comments received for DOE's proposed definition of lifetime are summarized and addressed in section III.C.1.

Cree, OSI, and NEMA commented that DOE should use a 95 percent confidence limit instead of 99 percent confidence limit for all represented values. (OSI, No. 32 at p. 4; Cree, No. 31 at p. 1; NEMA, No. 30 at p. 5) Additionally, NEMA recommended that DOE modify the Certification, Compliance, and Enforcement (hereafter referring to as CC&E) requirements at 10 CFR 429 to set tolerances based on expected measurement and product variation as set forth in NEMA LSD 63–2012. NEMA also contended that DOE's use of the LCL equation together with a divisor is statistically invalid. It suggested that DOE's equation eliminates the statistical confidence level associated with the estimated quantity and therefore no longer accounts for uncertainties related to both lamp manufacturing and testing. However, if DOE retains the LCL and divisor statistical representation, NEMA requested that DOE then use the recommendations presented in NEMA LSD 63–2012 and refer to its comments in previous rulemakings to properly set the value of the divisor. NEMA also suggested a formula to calculate the divisor for efficacy reporting, and expressed concerns regarding any future minimum lamp efficacy performance

requirements set by DOE. It argued that maximum technology levels need to be considered if DOE retains the LCL and divisor statistical representation. NEMA suggested that DOE keep minimum efficacy performance requirements for LED lamps between 9 and 13 percent below maximum technology levels, or accept NEMA's recommendation for compliance tolerances. (NEMA, No. 30 at p. 6)

DOE is maintaining its proposal to use a 99 percent LCL. However, DOE proposes to revise the divisor value to be computed using the maximum rather than average standard deviation of the collected LED lamp test data. The new divisor values for each metric are provided below:

Metric	LCL or UCL divisor value
Lumen Output	0.96
Input Power	1.02
Efficacy	0.96
CRI	0.98

Furthermore, DOE disagrees with NEMA's assertion, and continues to find that the LCL equation and divisor adequately address variation in lamp manufacturing and testing. DOE used the same methodology recommended by NEMA in LSD–63–2012 in the June 2014 SNOPR. However, DOE calculated a different standard deviation based on data provided by ENERGY STAR as well as PG&E, CLASP, and CLTC. DOE found the variation in test data for a single lamp model to be less than that provided by NEMA in LSD–63–2012. As described in the June 2014 SNOPR, certification testing is permitted to take place at one test laboratory and the sample set is unlikely to include inter-lab variability. Therefore, DOE does not include an inter-lab variability parameter in its calculation of the divisor when establishing rating requirements that are based on certification testing for which the manufacturer chooses the lab to conduct such testing. DOE will establish efficacy requirements within the GSL energy conservation standards rulemaking.[17]

Finally, DOE also proposes in this SNOPR to include represented value instructions for representations of power factor. Power factor is calculated using electrical measurements, including measurement of input power. DOE expects power factor to exhibit the same variability as input power, and bases the represented value calculation on that proposed for input power. Consumers prefer smaller values of input power, while larger values of power factor are preferred. Therefore, DOE inverted the input power represented value requirements from a UCL and divisor to an LCL and divisor. Input power uses a UCL of 99 percent and a divisor of 1.02, therefore, DOE proposes the corresponding LCL of 99 percent and divisor of 0.98 for the represented value of power factor.

DOE requests comment on the proposal for represented value calculation and specifically the revised divisors and new power factor represented value calculation in this SNOPR.

H. Rounding Requirements

In the June 2014 SNOPR, DOE proposed rounding requirements for lumen output, input power, efficacy, CCT, CRI, estimated annual energy cost, lifetime, and standby mode power. DOE received comments on some of these proposals and these comments are discussed in the following sections. DOE also discusses a new proposal regarding rounding requirements for power factor.

1. Lumen Output

In the June 2014 SNOPR, DOE proposed that the lumen output of all units be averaged and the value be rounded to three significant figures. 79 FR 32037. Based on a review of commercially available LED lamp products as well as testing equipment measurement capabilities, DOE determined that three significant figures is an achievable level of accuracy for LED lamps. NEMA commented that rounding to three significant figures does not provide a similar level of specificity for lumen outputs of all sizes as claimed by DOE, indicating that for small light sources, the resolution of photometric measurement is not sufficient for three-digit accuracy. Both OSI and NEMA recommended using Table 8–1 of LSD 63–2012 for reporting rounded values of lumen output. (OSI, No. 32 at p. 4; NEMA, No. 30 at pp. 4–5)

DOE agrees that rounding requirements should reflect realistic expectations of accuracy and repeatability. Based on a review of commercially available LED lamp products as well as testing equipment measurement capabilities, DOE maintains its determination in the June 2014 SNOPR that three significant figures is an achievable level of accuracy for LED lamps. Therefore, for this SNOPR, DOE continues to propose rounding of three significant figures[18] for lumen outputs of all sizes.

2. Correlated Color Temperature

In the June 2014 SNOPR, DOE proposed to round CCT values for individual units to the tens place and round the certified CCT values for the sample to the hundreds place. 79 FR 32038. DOE received comments from OSI, the Republic of Korea, and NEMA, recommending reporting nominal CCT based on the tolerance specified in Table 1 of ANSI C78.377. (OSI, No. 32 at p. 4; Republic of Korea, No. 37 at p. 2; NEMA, No. 30 at p. 4) However, as indicated in section III.B.3.c, DOE is not proposing to follow a nominal CCT methodology and therefore continues to propose rounding to the nearest tens digit for measurements of individual lamp units, and that certified CCT values for the sample be rounded to the hundreds place.

3. Lifetime

In the June 2014 SNOPR, DOE proposed that lifetime of LED lamps be rounded to the nearest whole hour. 79 FR 32038. NEMA commented that rounding to the nearest hour is not meaningful, and suggested that two significant digits is sufficient for lifetime rounding. (NEMA, No. 30 at p. 5) However, DOE maintains that rounding to the nearest whole hour is consistent with the unit of time used for lifetime metrics for other lamp technologies, and is a level of accuracy a laboratory is capable of measuring with a standard time-keeping device. Therefore, in this SNOPR, DOE retains the proposal that lifetime of LED lamps be rounded to the nearest whole hour.

4. Power Factor

DOE proposes that power factor be rounded to the nearest hundredths place, consistent with common usage in industry literature. DOE requests comment on this rounding proposal for power factor.

I. Interaction with ENERGY STAR

In the June 2014 SNOPR, to reduce test burden, DOE proposed allowing measurements collected for the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 to be used for calculating represented values of lumen output, input power, lamp efficacy, CCT, CRI, and lifetime. Both Cree and NEMA agreed with the allowance of using measurements collected for ENERGY STAR program requirements.

[17] Documents for the GSL rulemaking are available at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0051.*

[18] If the number 3,563 is rounded to three significant digits it becomes 3,560—with the 3, 5, and 6 being the significant digits.

(Cree, No. 31 at p. 1; NEMA, No. 30 at p. 4) However, the Republic of Korea suggested that DOE align all test procedures for LED lamps with those presented in the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0. It indicated that having different test methods is burdensome for manufacturers and creates confusion. (Republic of Korea, No. 37 at p. 2)

In this SNOPR, DOE proposes a new test procedure for lifetime that is largely based on the recent published IES LM–84–14 and IES TM–28–14 industry standards and provides a simple, straightforward, and flexible test procedure to account for potential future changes in the lifetime of LED products.

DOE notes that the proposal in this SNOPR projects time to failure based on data obtained for each individual LED lamp rather than assuming the same relationship between test duration and lumen maintenance applies to every LED lamp. Because DOE has revised its approach for lifetime measurement and projection, there is no longer significant similarity between the DOE and ENERGY STAR lifetime test procedures. DOE will work with ENERGY STAR to revise the test procedures for lifetime accordingly.

Measurements collected for the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.0 can be used for calculating represented values of energy efficiency or consumption metrics covered by the DOE test procedure as long as those measurements were collected in accordance with the DOE test procedure. Manufacturers must make representations in accordance with the DOE test procedure and represented value determination method beginning 180 days after publication of the final rule in the **Federal Register**.

J. Laboratory Accreditation

Regarding the National Voluntary Laboratory Accreditation Program (NVLAP) accreditation, in the June 2014 SNOPR DOE proposed to require lumen output, input power, lamp efficacy, CCT, CRI, lifetime, and standby mode power (if applicable) testing be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by the International Laboratory Accreditation Cooperation (ILAC). 79 FR 32039. NVLAP is a member of ILAC, so test data collected by any laboratory accredited by an accrediting body recognized by ILAC would be acceptable. Soraa, OSI, NEMA, and ILAC agreed with the proposal in the June 2014 SNOPR. (Soraa, No. 28 at p. 3; OSI, No. 32 at p. 4; NEMA, No. 30 at p. 4; ILAC, No. 26 at p. 1) Therefore, DOE maintains its proposal to require accreditation by NVLAP or an entity recognized by ILAC. DOE also proposes to state directly that accreditation by and Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) is an acceptable means of laboratory accreditation. In addition, DOE proposes to require that testing for power factor be conducted by test laboratories accredited by NVLAP or an entity recognized by ILAC.

K. Certification

DOE is proposing certification requirements for LED lamps in this SNOPR. Manufacturers will not have to certify values to DOE unless standards are promulgated for LED lamps as part of the rulemaking for general service lamps. However, DOE is providing certification requirements and the ability to certify by CCMS to enable FTC to allow manufacturers to submit data through DOE's Compliance Certification Management System (CCMS) related to FTC labeling requirements. Where the proposal is discussed in mandatory terms, the certification requirements would not be required for DOE purposes until compliance with standards is required.

DOE recognizes that testing of LED lamp lifetime requires considerably more time than testing of other LED lamp metrics. DOE proposes to allow new basic models of LED lamps to be distributed prior to completion of the full testing for lifetime. Similar to treatment of GSFLs and incandescent reflector lamps in 10 CFR 429.12(e)(2), DOE proposes that prior to distribution of the new basic model of LED lamp, manufacturers must submit an initial certification report. If testing for time to failure is not complete, manufacturers may include estimated values for lifetime and life. If reporting estimated values, the certification report must state the description of the prediction method and the prediction method must be generally representative of the methods specified in appendix BB. Manufacturers are also required to maintain records per 10 CFR 429.71 of the development of all estimated values and any associated initial test data. If reporting estimated values for lifetime and life, the certification report must indicate that the values are estimated until testing for time to failure is complete. If, prior to completion of testing, a manufacturer ceases to distribute in commerce a basic model, the manufacturer must submit a full certification report and provide all of the information listed in 10 CFR 429.12(b), including the product-specific information required by 10 CFR 429.56(b)(2), as part of its notification to DOE that the model has been discontinued.

DOE requests comment on the proposed certification report requirements.

L. Effective and Compliance Date

If adopted, the effective date for this test procedure would be 30 days after publication of the test procedure final rule in the **Federal Register**. Pursuant to EPCA, manufacturers of covered products must use the applicable test procedure as the basis for determining that their products comply with the applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) For those energy efficiency or consumption metrics covered by the DOE test procedure, manufacturers must make representations in accordance with the DOE test procedure and represented value determination method beginning 180 days after publication of the final rule in the **Federal Register**.

M. Description of Standards Incorporated by Reference

In this SNOPR, DOE proposes to incorporate by reference the test standard published by ANSI and IES, titled ''Nomenclature and Definitions for Illuminating Engineering,'' ANSI/IES RP–16–2010. ANSI/IES RP–16–2010 is an industry accepted standard that specifies definitions related to lighting and is applicable to products sold in North America. The definition of integrated LED lamp proposed in this SNOPR references ANSI/IES RP–16–2010. ANSI/IES RP–16–2010 is readily available on IES's Web site at *http://www.ies.org/*.

DOE also proposes to incorporate by reference the test standard published by IES, titled ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products,'' IES LM–79–2008. IES LM–79–2008 is an industry accepted standard that specifies test methods for determination of lumen output, input power, lamp efficacy, CCT, and CRI and is applicable to LED lamp products sold in North America. The test procedure for lumen output, input power, lamp efficacy, CCT, and CRI proposed in this SNOPR references IES LM–79–2008. IES

LM–79–2008 is readily available on IES's Web site at *http://www.ies.org/*.

DOE also proposes to incorporate by reference the test standard published by IES, titled ''Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires,'' IES LM–84–2014. IES LM–84–2014 is an industry accepted standard that specifies test methods for determination of lumen maintenance and is applicable to LED lamp products sold in North America. The test procedure for lifetime proposed in this SNOPR references IES LM–84–2014. IES LM–84–2014 is readily available on IES's Web site at *http://www.ies.org/*.

DOE also proposes to incorporate by reference the test standard published by IES, titled ''Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires,'' IES TM–28–14. IES TM–28–14 is an industry accepted standard that specifies test methods for projection of lumen maintenance and is applicable to LED lamp products sold in North America. The test procedure for lifetime proposed in this SNOPR references IES TM–28–14. IES TM–28–14 is readily available on IES's Web site at *http://www.ies.org/*.

N. Ceiling Fan Light Kits using LED Lamps

DOE proposed to harmonize the lamp testing procedures for lamps, including LEDs, used in ceiling fan lights kits in a notice published on October 31, 2014. 79 FR 64688 (Docket EERE–2013–BT–TP–0050). The comments received as part of that docket were generally supportive of this approach and are discussed as part of that rulemaking docket. Since the test procedure for LED lamps is still being considered as part of this rulemaking, DOE is proposing to revise the appropriate cross-reference (relative to the proposals at 79 FR 64688 (October 31, 2014)) in the ceiling fan light kit test procedure appendix as part of this rulemaking. DOE requests comments on this approach and adopting the cross reference for LED lamps used in CFLKs as part of this rulemaking.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel*.

DOE reviewed the test procedures considered in this SNOPR under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. As discussed in more detail in the following sections, DOE found that because the proposed test procedures have not previously been required of manufacturers, all manufacturers, including small manufacturers, may potentially experience a financial burden associated with this new testing requirement. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. Therefore, DOE has prepared an IRFA for this rulemaking. The IRFA describes the potential impacts on small businesses associated with LED lamp testing requirements. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review.

1. Estimated Small Business Burden

SBA has set a size threshold for electric lamp manufacturers to describe those entities that are classified as ''small businesses'' for the purposes of the RFA. DOE used the SBA's small business size standards to determine whether any small manufacturers of LED lamps would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/sites/default/files/Size_Standards_Table.pdf*. LED lamp manufacturing is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered a small business for this category.

For the June 2014 SNOPR, DOE examined the number of small businesses that will potentially be affected by the LED lamps test procedure. This evaluation revealed that the test procedure requirements proposed in the June 2014 SNOPR will apply to about 41 small business manufacturers of LED lamps. DOE compiled this list of manufacturers by reviewing the DOE LED Lighting Facts label list of partner manufacturers,[19] the SBA database, ENERGY STAR's list of qualified products,[20] and performing a general search for LED manufacturers. DOE determined which companies manufacture LED lamps by reviewing company Web sites, the SBA Web site when applicable, calling companies directly, and/or reviewing the Hoovers Inc. company profile database. Through this process, DOE identified 41 small businesses that manufacture LED lamps, each offering about 23 different basic models.[21] NEMA suggested that DOE contact Jim Brodrick, Program Manager of DOE's solid-state lighting (SSL) program, to review the estimate for total number of small businesses that will likely be affected by implementing this test procedure. (NEMA, No. 30 at p. 4) DOE has incorporated feedback from DOE's SSL program, and maintains its estimate for the number of small businesses that would be affected by the proposed rulemaking.

In the June 2014 SNOPR, DOE estimated that the labor costs associated with conducting the input power, lumen output, CCT, CRI, and standby mode power testing is $31.68 per hour. 79 FR 32041. Calculating efficacy of an LED lamp was determined not to result in any incremental testing burden beyond the cost of carrying out lumen output and input power testing. DOE also expected standby mode power testing to require a negligible incremental amount of time in addition to the time required for the other

[19] DOE LED Lighting Facts Partner List, *http://www.lightingfacts.com/Partners/Manufacturer*.

[20] ENERGY STAR Qualified Lamps Product List, *http://downloads.energystar.gov/bi/qplist/Lamps_Qualified_Product_List.xls?dee3-e997*.

[21] The median revenue for these small businesses can be found in the June 2014 SNOPR. 79 FR 32040.

metrics. In total, DOE estimated that using the June 2014 SNOPR test method to determine light output, input power, CCT, CRI, and standby mode power would result in an estimated incremental labor burden of $29,140 for each manufacturer.

The June 2014 SNOPR also estimated that lifetime testing would also contribute to overall cost burden. The initial setup including the cost to custom build test racks capable of holding 23 different LED lamp models, each tested in sample sets of ten lamps (a total of 230 LED lamps) would be $25,800. 79 FR 32041. The labor cost for lifetime testing was also determined to contribute to overall burden. DOE estimated that the combination of monitoring the lamps during the test duration, measuring lumen maintenance, and calculating lifetime at the end of the test duration would require approximately four hours per lamp by an electrical engineering technician. DOE estimated that using this test method to determine lifetime would result in testing-related labor costs of $29,140 for each manufacturer. 79 FR 32041.

Because NVLAP [22] imposes a variety of fees during the accreditation process, including fixed administrative fees, variable assessment fees, and proficiency testing fees, DOE also provided cost estimates for light output, input power, CCT, CRI, lifetime, and standby mode power (if applicable) testing to be NVLAP-accredited or accredited by an organization recognized by NVLAP. Assuming testing instrumentation is already available, in the June 2014 SNOPR, DOE estimated the first year NVLAP accreditation cost would be $15,320, initial setup cost would be $25,800, and the labor costs to carry out testing would be approximately $58,280 for each manufacturer producing 23 basic models. 79 FR 32042. Therefore, in the first year, for manufacturers without testing racks or NVLAP accreditation who choose to test in house, DOE estimated a total cost burden of $99,400, or about $432 per LED lamp tested. Alternatively, if a manufacturer opts to send lamps to a third-party test facility, DOE estimated testing of lumen output, input power, CCT, CRI, lifetime, and standby mode power to cost $500 per lamp. In total, DOE estimated in the June 2014 SNOPR that the LED lamp test procedure would result in expected third-party testing costs of $115,000 for each manufacturer for 23 basic models. 79 FR 32042.

Both OSI and NEMA commented that most established manufacturers participate in the ENERGY STAR program, and therefore manufacturers already incur the testing costs. (OSI, No. 32 at p. 4; NEMA, No. 30 at p. 4) In contrast, Soraa commented that it estimates its testing costs at approximately $50,000 per year for each model of LED lamp, not including internal costs. (Soraa, No. 28 at p. 3)

Regarding Soraa's cost estimate, DOE reviewed its cost estimates for the proposals in this SNOPR and determined that the majority of the assumptions involved are still appropriate. DOE tentatively concluded that calculation of power factor represented no incremental burden over the estimate in the June 2014 SNOPR, because the calculation is simple and the measurements needed would already be available using the input power test setup. However, for the lifetime test procedure described in section III.D of this SNOPR, a lumen output measurement is required to be recorded for multiple time intervals at a minimum of every 1,000 hours of elapsed operating time. This represents an increase in the number of required measurements in the lifetime test procedure compared to the previous proposal. Therefore, DOE estimates that the combination of monitoring the lamps during the test duration, measuring lumen maintenance at multiple time intervals, and calculating lifetime at the end of the test duration would increase the labor hour requirements from approximately four hours to eight hours per lamp. With this updated assumption DOE estimates that using the test method proposed in this SNOPR to determine lifetime would result in testing-related labor costs of $58,280 for each manufacturer.

Therefore, in the first year, for manufacturers without testing racks or NVLAP accreditation who choose to test in-house, DOE estimated a maximum total cost burden of $128,540, or about $559 per LED lamp tested. DOE expects the setup cost to be a onetime cost to manufacturers. Further, the labor costs to perform testing would likely be smaller than $87,430 after the first year because only new products or redesigned products would need to be tested. DOE estimates that the cost to send lamps to a third-party test facility would be $600 per lamp due to the additional required measurements in the lifetime test procedure. In total, the LED lamp test procedure would result in expected third-party testing costs of $138,000 for each manufacturer who produces 23 basic models. DOE notes this is not an annual cost.

Regarding OSI and NEMA's comment, DOE agrees that the cost estimates described in this section are much larger than the actual cost increase most manufacturers will experience. DOE notes that the majority of manufacturers are already testing for lumen output, input power, CCT, and CRI, as these metrics are well established and required within the industry standard IES LM–79–2008. The IES LM–79–2008 standard is also the recommended standard for testing LED lamps for the FTC Lighting Facts label as well as the ENERGY STAR program. Most manufacturers of LED lamps already participate in the ENERGY STAR program, which includes requirements for lifetime, input power, lumen output, CCT, and CRI. While DOE's proposed test procedure differs from ENERGY STAR in some respects, DOE expects the incremental difference in testing costs under the two test procedures to be significantly less than full cost of testing under the proposed DOE test procedure. This is because most manufacturers already own the requisite test equipment (*e.g.,* test racks) and already have labor expenditures corresponding to carrying out testing for ENERGY STAR. DOE and ENERGY STAR testing costs would not be additive, because ENERGY STAR references DOE test procedures where they exist and revises its specification to reference new DOE test procedures when they are finalized.[23] Based on these revisions, manufacturers would not need to complete separate testing for the ENERGY STAR and DOE programs.

DOE invites all interested parties to provide comments, including specific data and rationale if they recommend DOE revise its cost estimate. As part of any comments submitted on the potential small business impacts, it would be helpful if impacted entities were to describe any cost estimates as compared to their current business (*e.g.,* a general comparison to the annual revenues and how this proposal would impact their business for an example manufacturer), including any suggested alternatives DOE should consider to potentially mitigate burden.

[22] As discussed in section III.J, laboratories can be accredited by any accreditation body that is a signatory member to the ILAC MRA. DOE based its estimate of the costs associated with accreditation on the NVLAP accreditation body.

[23] ENERGY STAR published a second draft of its Lamps Version 2.0 specification on April 10, 2015 and included the following note on page 2: ''In an effort to provide partners with continuity and honor the Agency's intention to harmonize with applicable DOE Test Procedures, this Draft proposes to allow for use of the final test procedure for LED Lamps once it is published by DOE, where applicable.''

2. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with this proposed rule.

3. Significant Alternatives to the Proposed Rule

DOE tentatively determined that there are no better alternatives to the proposed test procedure, including test procedures that incorporate industry test standards, other than the proposed methods. IES LM–79–2008, the test procedure referenced in this SNOPR for the proposed approach for determining lumen output, input power, lamp efficacy, CCT, CRI, and power factor, is the most commonly used industry standard that provides instructions for the electrical and photometric measurement of LED lamps. This SNOPR also references IES LM–84–14 and IES–TM–28–14, which represent new industry guidance for measuring and projecting lumen maintenance. While the ENERGY STAR Program Requirements Product Specification for Lamps (Light Bulbs) Version 1.1 presents a separate method for testing the lifetime of LED lamps, proposing a lifetime test procedure based on IES LM–84–14 and IES–TM–28–14 will align with current industry consensus on this subject. The lifetime test procedure proposed in this SNOPR will produce more accurate lifetime estimates than the method currently used for ENERGY STAR certification because this SNOPR projects time to failure based on data obtained for each individual LED lamp.

C. Review Under the Paperwork Reduction Act of 1995

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400.

DOE requested OMB approval of an extension of this information collection for three years, specifically including the collection of information proposed in the present rulemaking, and estimated that the annual number of burden hours under this extension is 30 hours per company. In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017. 80 FR 5099 (January 30. 2015).

Notwithstanding any other provision of the law, no person is required to respond to, nor must any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE is proposing a test procedure for LED lamps that will be used to support the upcoming general service lamps energy conservation standard rulemaking as well as FTC's Lighting Facts labeling program. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would adopt existing industry test procedures for LED lamps, so it would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for

inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988) that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed regulatory action to establish a test procedure for measuring the lumen output, input power, lamp efficacy, CCT, CRI, power factor, lifetime, and standby mode power of LED lamps is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates test methods contained in the following commercial standards: ANSI/IES RP–16–2010, ''Nomenclature and Definitions for Illuminating Engineering;'' IES LM–79–2008, ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products;'' IES LM–84–14, ''Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires;'' and IES TM–28–14, ''Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition prior to prescribing a final rule.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be

publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereafter referred to as confidential business information or CBI). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, free of any defects or viruses, and not secured. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 and 500 form letters per PDF, or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential business information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Whether industry standards or test methods are available for measuring color quality metrics other than CRI. The proposed incorporation of IES LM–84–14 and IES TM–28–14 for measuring and projecting the lumen maintenance of LED lamps.

2. The proposal of referencing section 4.0 of IES LM–84–14 for specifying the ambient conditions for lumen maintenance testing of LED lamps.

3. The lumen maintenance test procedure.

4. The proposal to adopt the section 5.2 of IES LM–84–14 requirements for AC power supplies, and on the requirement that input voltage be monitored and regulated to within less than or equal to 2.0 percent of the rated RMS voltage as specified in section 5.4 of IES LM–84–14. DOE also invites comments on the proposal to exclude the line impedance guidelines provided in section 5.3 of IES LM–84–14.

5. The proposal to adopt section 5.5 of IES LM–84–14, which provides test rack wiring requirements during lumen maintenance testing of LED lamps.

6. Referencing the lamp handling and tracking proposal specified in sections 7.2 and 7.3 of IES–LM–84–14.

7. The proposal to adopt the time recording procedures in section 7.5 of IES–LM–84–14.

8. The proposal that, for the case in which lumen maintenance testing results in complete loss of light output, the time to failure is equal to the last elapsed operating time measurement for which the recorded lumen output measurement is greater than or equal to 70 percent.

9. The proposal that all lumen maintenance data shall be collected at least once every 1,000 hours, as well as the adoption of the data collection requirements specified in section 4.2 of IES TM–28–14.

10. The proposal to reference the direct extrapolation method specified in section 5.1 of IES TM–28–14 for projecting time to failure of LED lamps, as well as the proposed modifications to project time to failure of each individual lamp (no averaging lumen maintenance values), the proposal to lower the test duration threshold to 3,000 hours, and the proposed procedures for limiting the maximum time to failure claim.

11. The proposal to determine stabilization for standby mode measurements using power measurements only.

12. The proposed measurement and calculation of power factor of LED lamps.

13. The proposal to revise the basic model definition in 10 CFR 430.2 with respect to LED lamps as follows: ''With respect to integrated light-emitting diode lamps: Lamps that have identical lumens per watt (lm/W).''

14. The proposed represented value calculation and specifically the revised divisors for lumen output, input power, efficacy, and CRI, and the new power factor represented value calculation proposed in this SNOPR.

15. The proposed rounding requirements for power factor.

16. The analysis of initial setup and labor costs as well as the average annual burden for conducting testing of LED lamps.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC on June 25, 2015.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II, Subchapter D, of Title 10, of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S. C. 6291–6317.

■ 2. Section 429.12(f) is revised to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(f) *Discontinued model filing.* When production of a basic model has ceased and it is no longer being sold or offered for sale by the manufacturer or private labeler, the manufacturer must report this discontinued status to DOE as part of the next annual certification report following such cessation. For each basic model, the report shall include the information specified in paragraphs (b)(1) through (7) of this section, except that for integrated light-emitting diode lamps, the manufacturer must submit a full certification report, including all of the information required by paragraph (b) of this section and the product-specific information required by § 429.56(b)(2).

* * * * *

■ 3. Section 429.33 is amended by revising paragraphs (a)(2)(ii), (a)(3)(iv), and (a)(3)(vi) [proposed at 79 FR 64688 (October 31, 2014)] to read as follows:

§ 429.33 Ceiling fan light kits.

(a) * * *

(2) * * *

(ii) For ceiling fan light kits with medium screw base sockets that are packaged with integrated light-emitting diode lamps, the represented values of each basic model of lamp packaged with the ceiling fan light kit shall be determined in accordance with § 429.56.

* * * * *

(3) * * *

(iv) For ceiling fan light kits packaged with integrated LED lamps, the represented values of each basic model of lamp shall be determined in accordance with § 429.56.

* * * * *

(vi) For ceiling fan light kits packaged with other SSL lamps (not integrated LED lamps), the represented values of each basic model of lamp shall be determined in accordance with § 429.56.

* * * * *

■ 4. Section 429.56 is added to read as follows:

§ 429.56 Integrated light-emitting diode lamps.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of integrated light-emitting diode lamps by testing, in conjunction with the sampling provisions in this section.

(1) *Units to be tested.*

(i) The general requirements of § 429.11(a) are applicable except that the sample must be comprised of production units; and

(ii) For each basic model of integrated light-emitting diode lamp, the minimum number of units tested shall be no less than 10 and the same sample comprised of the same units must be used for testing all metrics. If more than 10 units are tested as part of the sample, the total number of units must be a multiple of two. For each basic model, a sample of sufficient size shall be randomly selected and tested to ensure that:

(A) Represented values of initial lumen output, lamp efficacy, color rendering index (CRI), power factor, or other measure of energy consumption of a basic model for which consumers would favor higher values must be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit; or,

(*2*) The lower 99 percent confidence limit (LCL) of the true mean divided by 0.96; or the lower 99 percent confidence limit (LCL) of the true mean divided by 0.98 for CRI and power factor, where:

$$LCL = \bar{x} - t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

and, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A to this subpart).

(B) Represented values of input power, standby mode power or other measure of energy consumption of a basic model for which consumers would favor lower values must be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit; or,

(*2*) The upper 99 percent confidence limit (UCL) of the true mean divided by 1.02, where:

$$UCL = \bar{x} + t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

and, $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A to this subpart);

(C) Represented values of correlated color temperature (CCT) of a basic model must be equal to the mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit.

(D) The lifetime of an integrated light-emitting diode lamp is calculated by determining the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units when the numbers are sorted in value order) rounded to the nearest hour. Represented values of lifetime cannot exceed the calculated lifetime of an integrated light-emitting diode lamp.

(2) The represented value of life (in years) of an integrated light-emitting

diode lamp must be calculated by dividing the lifetime of an integrated light-emitting diode lamp by the estimated annual operating hours as specified in 16 CFR 305.15(b)(3)(iii).

(3) The represented value of estimated annual energy cost for an integrated light-emitting diode lamp, expressed in dollars per year, must be the product of the input power in kilowatts, an electricity cost rate as specified in 16 CFR 305.15(b)(1)(ii), and an estimated average annual use as specified in 16 CFR 305.15(b)(1)(ii).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to integrated light-emitting diode lamps;

(2) Values reported in certification reports are represented values. Lifetime and life are estimated values until testing is complete. When reporting estimated values, the certification report must specifically describe the prediction method, which must be generally representative of the methods specified in appendix BB. Manufacturers are required to maintain records per 10 CFR 429.71 of the development of all estimated values and any associated initial test data. Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, the date of first manufacture, initial lumen output, input power, lamp efficacy, CCT, power factor, lifetime (and whether value is estimated), and life (and whether value is estimated). For lamps with multiple modes of operation (such as variable CCT or CRI), the certification report must also list which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode.

(c) *Rounding requirements.*

(1) Round input power to the nearest tenth of a watt.

(2) Round lumen output to three significant digits.

(3) Round lamp efficacy to the nearest tenth of a lumen per watt.

(4) Round correlated color temperature to the nearest 100 Kelvin.

(5) Round color rendering index to the nearest whole number.

(6) Round power factor to the nearest hundredths place.

(7) Round lifetime to the nearest whole hour.

(8) Round standby mode power to the nearest tenth of a watt.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.2 is amended by adding in alphabetical order the definitions of ''Integrated light-emitting diode lamp'' and ''Lifetime of an integrated light-emitting diode lamp'' to read as follows:

§ 430.2 Definitions.

* * * * *

Integrated light-emitting diode lamp means an integrated LED lamp as defined in ANSI/IES RP–16 (incorporated by reference; see § 430.3).

* * * * *

Lifetime of an integrated light-emitting diode lamp means the length of operating time between first use and failure of 50 percent of the sample units (as defined in § 429.56(a)(1)), in accordance with the test procedures described in section 4 of appendix BB to subpart B of part 430 of this chapter.

* * * * *

■ 7. Section 430.3 is amended by:

■ a. Adding paragraphs (o)(8) through (11); and

■ b. Removing ''and X'' in paragraph (p)(4) and adding in its place, ''X, and BB''.

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(o) * * *

(8) IES LM–79–08 (''IES LM–79''), Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products, approved December 31, 2007; IBR approved for appendix BB to subpart B of this part.

(9) IES LM–84–14 (''IES LM–84''), Approved Method: Measuring Luminous Flux and Color Maintenance of LED Lamps, Light Engines, and Luminaires, approved March 31, 2014; IBR approved for appendix BB to subpart B of this part.

(10) ANSI/IES RP–16–2010, Nomenclature and Definitions for Illuminating Engineering, published July 1, 2010; IBR approved for § 430.2.

(11) IES TM–28–14 (''IES TM–28''), Projecting Long-Term Luminous Flux Maintenance of LED Lamps and Luminaires, approved May 20, 2014; IBR approved for appendix BB to subpart B of this part.

* * * * *

■ 8. Section 430.23 is amended by:

■ a. Revising paragraphs (x)(1)(ii) and (x)(2)(iv) [proposed at 79 FR 64688 (October 31, 2014)]; and

■ b. Adding paragraph (dd).

These revisions and addition read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(x) * * *

(1) * * *

(ii) For a ceiling fan light kit with medium screw base sockets that is packaged with integrated LED lamps, measure lamp efficacy in accordance with paragraph (dd) of this section.

* * * * *

(2) * * *

(iv) For a ceiling fan light kit packaged with integrated LED lamps, measure lamp efficacy in accordance with paragraph (dd) of this section.

* * * * *

(dd) *Integrated light-emitting diode lamp.* (1) The input power of an integrated light-emitting diode lamp must be measured in accordance with section 2.7 of appendix BB of this subpart. Individual unit input power must be rounded to the nearest tenth of a watt.

(2) The lumen output of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart. Individual unit lumen output must be rounded to three significant digits.

(3) The lamp efficacy of an integrated light-emitting diode lamp must be calculated in accordance with section 3 of appendix BB of this subpart. Individual unit lamp efficacy must be rounded to the nearest tenth of a lumen per watt.

(4) The correlated color temperature of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart. Individual unit correlated color temperature must be rounded to the nearest 10 Kelvin.

(5) The color rendering index of an integrated light-emitting diode lamp must be measured in accordance with section 3 of appendix BB of this subpart. Individual unit color rendering index must be rounded to the nearest whole number.

(6) The time to failure of an integrated light-emitting diode lamp must be measured in accordance with section 4 of appendix BB of this subpart. Individual unit time to failure must be rounded to the nearest hour.

(7) The power factor of an integrated light-emitting diode lamp must be measured in accordance with section 4

of appendix BB of this subpart. Individual unit power factor must be rounded to the nearest tenths place.

(8) The standby mode power must be measured in accordance with section 5 of appendix BB of this subpart. Individual unit standby mode power must be rounded to the nearest tenth of a watt.

■ 9. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

The testing for general service fluorescent lamps, general service incandescent lamps (with the exception of lifetime testing), incandescent reflector lamps, medium base compact fluorescent lamps, fluorescent lamp ballasts, and integrated light-emitting diode lamps must be conducted by test laboratories accredited by an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable testing.

■ 10. Appendix BB to subpart B of part 430 is added to read as follows:

Appendix BB to Subpart B of Part 430—Uniform Test Method for Measuring the Input Power, Lumen Output, Lamp Efficacy, Correlated Color Temperature (CCT), Color Rendering Index (CRI), Power Factor, Time to Failure, and Standby Mode Power of Integrated Light-Emitting Diode (LED) Lamps

Note: After [Date 180 Days after Publication of Final Rule in the **Federal Register**], any representations made with respect to the energy use or efficiency of integrated light-emitting diode lamps must be made in accordance with the results of testing pursuant to this appendix.

1. *Scope:* This appendix specifies how to measure input power, lumen output, lamp efficacy, CCT, CRI, power factor, time to failure, and standby mode power for integrated LED lamps.

2. *Definitions*

2.1. The definitions specified in section 1.3 of IES LM–79 except section 1.3(f) (incorporated by reference; see § 430.3) apply.

2.2. *Initial lumen output* means the measured lumen output after the lamp is initially energized and stabilized using the stabilization procedures in section 3 of this appendix.

2.3. *Interval lumen output* means the measured lumen output at constant intervals after the initial lumen output measurement in accordance with section 3 of this appendix.

2.4. *Lamp efficacy* means the ratio of measured initial lumen output in lumens to the measured lamp input power in watts, in units of lumens per watt.

2.5. *Rated input voltage* means the voltage(s) marked on the lamp as the intended operating voltage. If not marked on the lamp, assume 120 V.

2.6. *Test duration* means the operating time of the LED lamp after the initial lumen output measurement and before, during, and including the final lumen output measurement, in units of hours.

2.7. *Time to failure* means the time elapsed between first use and the point at which the lamp reaches 70 percent lumen maintenance as measured in section 4 of this appendix.

3. *Active Mode Test Method for Determining Lumen Output, Input Power, CCT, CRI, Power Factor, and Lamp Efficacy*

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–79 (incorporated by reference; see § 430.3).

3.1. *Test Conditions and Setup*

3.1.1. Establish the ambient conditions, power supply, electrical settings, and instrumentation in accordance with the specifications in sections 2.0, 3.0, 7.0, and 8.0 of IES LM–79 (incorporated by reference; see § 430.3), respectively. The ambient temperature must be maintained at 25 °C ± 1 °C.

3.1.2. Position an equal number of integrated LED lamps in the base up and base down orientations throughout testing; if the position is restricted by the manufacturer, test units in the manufacturer-specified position.

3.1.3. Operate the integrated LED lamp at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages including 120 volts, operate the lamp at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, operate the lamp at the highest rated input voltage. Additional tests may be conducted at other rated voltages.

3.1.4. Operate the lamp at the maximum input power. If multiple modes occur at the same maximum input power (such as variable CCT or CRI), the manufacturer can select any of these modes for testing; however, all measurements described in sections 3 and 4 of this appendix must be taken at the same selected mode. The manufacturer must indicate in the test report which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode.

3.2. *Test Method, Measurements, and Calculations*

3.2.1. The test conditions and setup described in section 3.1 of this appendix apply to this section 3.2.

3.2.2. Stabilize the integrated LED lamp prior to measurement as specified in section 5.0 of IES LM–79 (incorporated by reference; see § 430.3). Calculate the stabilization variation as [(maximum − minimum)/minimum] of at least three readings of the input power and lumen output over a period of 30 minutes, taken 15 minutes apart.

3.2.3. Measure the input power in watts as specified in section 8.0 of IES LM–79 (incorporated by reference; see § 430.3).

3.2.4. Measure the input voltage in volts as specified in section 8.0 of IES LM–79 (incorporated by reference; see § 430.3).

3.2.5. Measure the input current in amps as specified in section 8.0 of IES LM–79 (incorporated by reference; see § 430.3).

3.2.6. Measure lumen output as specified in section 9.1 and 9.2 of IES LM–79 (incorporated by reference; see § 430.3). Do not use goniophotometers.

3.2.7. Determine CCT according to the method specified in section 12.0 of IES LM–79 (incorporated by reference; see § 430.3) with the exclusion of section 12.2 and 12.5 of IES LM–79. Do not use goniophotometers.

3.2.8. Determine CRI according to the method specified in section 12.0 of IES LM–79 (incorporated by reference; see § 430.3) with the exclusion of section 12.2 and 12.5 of IES LM–79. Do not use goniophotometers.

3.2.9. Determine lamp efficacy by dividing measured initial lumen output by the measured input power.

3.2.10. Determine power factor by dividing measured input power by the product of the measured input voltage and measured input current.

4. *Active Mode Test Method to Measure Time to Failure*

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–84 (incorporated by reference; see § 430.3) and IES TM–28 (incorporated by reference; see § 430.3).

4.1. *Lamp Handling, Tracking, and Time Recording*

4.1.1. Handle, transport, and store the integrated LED lamp as described in section 7.2 of IES LM–84 (incorporated by reference; see § 430.3).

4.1.2. Mark and track the integrated LED lamp as specified in section 7.3 of IES LM–84 (incorporated by reference; see § 430.3).

4.1.3. Measure elapsed operating time only when the LED lamps are operating. Calibrate all equipment used for measuring elapsed operating time to have a total minimum temporal resolution with a tolerance of 0.5%, as described in section 7.5 of IES LM–84 (incorporated by reference; see § 430.3).

4.1.4. Check the integrated LED lamps regularly for failure either by visual observation or automatic monitoring, at a minimum, at the start of time to failure testing and during every interval measurement.

4.2. *Measure Initial Lumen Output.* Measure the initial lumen output according to section 3 of this appendix.

4.3. *Test Duration.* Operate the integrated LED lamp for a period of time (the test duration) after the initial lumen output measurement and before, during, and including the final lumen output measurement.

4.3.1. There is no minimum test duration requirement for the integrated LED lamp. The test duration is selected by the manufacturer. See section 4.6 of this appendix for instruction on the maximum time to failure.

4.3.2. The test duration only includes time when the integrated LED lamp is energized and operating.

4.4. *Operating Conditions and Setup Between Lumen Output Measurements*

4.4.1. Electrical settings must be as described in section 5.1 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.2. Ambient temperature conditions must be as described in section 4.4 of IES LM–84 (incorporated by reference; see § 430.3). Maintain the ambient temperature at 25 °C ± 5 °C.

4.4.3. Humidity in the testing environment must be as described in section 4.5 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.4. Air movement around each lamp must be as described in section 4.6 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.5. Position an equal number of integrated LED lamps in the base up and base down orientations throughout testing; if the manufacturer restricts the position, test the units in the manufacturer-specified position.

4.4.6. Operate the lamp at the rated input voltage as described in section 3.1.3 of this appendix for the entire test duration.

4.4.7. Line voltage waveshape must be as described in section 5.2 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.8. Monitor and regulate rated input voltage as described in section 5.4 of IES LM–84 (incorporated by reference; see § 430.3).

4.4.9. Operate LED lamps as specified in section 7.4 of IES LM–84 (incorporated by reference; see § 430.3).

4.5. Measure Interval Lumen Output. Measure interval lumen output according to section 2.7 of this appendix.

4.5.1. Record interval lumen output and elapsed operating time as described in section 4.2 of IES TM–28 (incorporated by reference; see § 430.3).

4.5.1.1. For test duration values greater than or equal to 3,000 hours and less than 6,000 hours, measure lumen maintenance of the integrated LED lamp at an interval in accordance with section 4.2.2 of IES TM–28 (incorporated by reference; see § 430.3).

4.5.1.2. For test duration values greater than or equal to 6,000 hours, measure lumen maintenance at an interval in accordance with section 4.2.1 of IES TM–28 (incorporated by reference; see § 430.3).

4.6. *Calculate Lumen Maintenance and Time to Failure*

4.6.1. Calculate the lumen maintenance of the lamp at each interval by dividing the interval lumen output ''x_t'' by the initial lumen output ''x_0''. Measure initial and interval lumen output in accordance with sections 4.2 and 4.5 of this appendix, respectively.

4.6.2. For lumen maintenance values less than 0.7, including lamp failures that result in complete loss of light output, time to failure is equal to the previously recorded lumen output measurement at a shorter test duration where the lumen maintenance is greater than or equal to 70 percent.

4.6.3. For lumen maintenance values equal to 0.7, time to failure is equal to the test duration.

4.6.4. For lumen maintenance values greater than 0.7, use the following method:

4.6.4.1. For test duration values less than 3,000 hours, do not project time to failure. Time to failure equals the test duration.

4.6.4.2. For test duration values greater than or equal to 3,000 hours but less than 6,000 hours, time to failure is equal to the lesser of the projected time to failure calculated according to section 4.6.4.2.1 of this appendix or the test duration multiplied by the limiting multiplier calculated in section 4.6.4.2.1.

4.6.4.2.1. Project time to failure using the projection method described in section 5.1.4 of IES TM–28 (incorporated by reference; see § 430.3). Project time to failure for each individual LED lamp. Data used for the time to failure projection method must be as specified in section 5.1.3 of IES TM–28 (incorporated by reference; see § 430.3).

4.6.4.2.2. Calculate the limiting multiplier from the following equation:

Limiting multiplier = 1/600 * test duration −4

4.6.4.3. For test duration values greater than 6,000 hours, time to failure is equal to the lesser of the projected time to failure calculated according to section 4.6.4.3.1 or the test duration multiplied by six.

4.6.4.3.1. Project time to failure using the projection method described in section 5.1.4 of IES TM–28 (incorporated by reference; see § 430.3). Project time to failure for each individual LED lamp. Data used for the time to failure projection method must be as specified in section 5.1.3 of IES TM–28 (incorporated by reference; see § 430.3).

5. *Standby Mode Test Method for Determining Standby Mode Power*

Measure standby mode power consumption for integrated LED lamps capable of operating in standby mode. The standby mode test method in this section 5 may be completed before or after the active mode test method for determining lumen output, input power, CCT, CRI, power factor, and lamp efficacy in section 3 of this appendix. The standby mode test method in this section 5 must be completed before the active mode test method for determining time to failure in section 4 of this appendix. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM–79 (incorporated by reference; see § 430.3) and IEC 62301 (incorporated by reference; see § 430.3).

5.1. *Test Conditions and Setup*

5.1.1. Establish the ambient conditions, power supply, electrical settings, and instrumentation in accordance with the specifications in sections 2.0, 3.0, 7.0, and 8.0 of IES LM–79 (incorporated by reference; see § 430.3), respectively. Maintain the ambient temperature at 25 °C ± 1 °C.

5.1.2. Position an equal number of integrated LED lamps in the base up and base down orientations throughout testing.

5.1.3. Operate the integrated LED lamp at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages, operate the integrated LED lamp at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, operate the integrated LED lamp at the highest rated input voltage.

5.2. *Test Method, Measurements, and Calculations*

5.2.1. The test conditions and setup described in section 3.1 of this appendix apply to this section 5.1.3.

5.2.2. Stabilize the integrated LED lamp prior to measurement as specified in section 5.0 of IES LM–79 (incorporated by reference; see § 430.3). Calculate the stabilization variation as [(maximum − minimum)/minimum] of at least three readings of the input power over a period of 30 minutes, taken 15 minutes apart.

5.2.3. Configure the integrated LED in standby mode by sending a signal to the integrated LED lamp instructing it to have zero light output.

5.2.4. Measure the standby mode power in watts as specified in section 5 of IEC 62301 (incorporated by reference; see § 430.3).

[FR Doc. 2015–16477 Filed 7–8–15; 8:45 am]

BILLING CODE 6450–01–P

Reader Aids

Federal Register

Vol. 80, No. 131

Thursday, July 9, 2015

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JULY

37529–37920 1
37921–38390 2
38391–38612 6
38613–38912 7
38913–39376 8
39377–39668 9

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13699 37529

Administrative Orders:
1 37921

5 CFR

Proposed Rules:
Ch. XXII 38019

7 CFR

929 37531
932 37533
4279 39377
4287 39377

Proposed Rules:
986 38021
1211 37555

9 CFR

94 ..... 37923, 37935

10 CFR

430 ..... 37953, 37954

Proposed Rules:
Ch. II 38019
Ch. III 38019
Ch. IX 38019
429 ..... 39486, 39644
430 39644
431 ..... 38032, 39486
1703 39389

12 CFR

Proposed Rules:
Ch. I 39390
Ch. II 39390
Ch. III 39390
701 37898
723 37898
741 37898

14 CFR

33 38913
39 ..... 38391, 38613, 38615, 38617

Proposed Rules:
39 ..... 38033, 38036, 38038, 38406, 38408, 38656, 38990, 38992, 39392, 39394

16 CFR

Proposed Rules:
313 38410
1112 38041
1233 38041

17 CFR

231 37536
232 37537
241 37536
271 37536
275 37538
276 37536

Proposed Rules:
240 38995
275 38050
279 38050

18 CFR

Proposed Rules:
342 39010

19 CFR

201 39377
206 39377
208 39377
213 39377
214 39377
215 39377
216 39377
217 39377
218 39377
219 39377
220 39377
221 39377
222 39377
223 39377
224 39377
225 39377
226 39377
227 39377
228 39377
229 39377
230 39377
231 39377
232 39377
233 39377
234 39377
235 39377
236 39377
237 39377
238 39377
239 39377
240 39377
241 39377
242 39377
243 39377
244 39377
245 39377
246 39377
247 39377
248 39377
249 39377
250 39377
251 39377
252 39377
253 39377
254 39377
255 39377
256 39377
257 39377
258 39377
259 39377

260 39377
261 39377
262 39377
263 39377
264 39377
265 39377
266 39377
267 39377
268 39377
269 39377
270 39377
271 39377
272 39377
273 39377
274 39377
275 39377
276 39377
277 39377
278 39377
279 39377
280 39377
281 39377
282 39377
283 39377
284 39377
285 39377
286 39377
287 39377
288 39377
289 39377
290 39377
291 39377
292 39377
293 39377
294 39377
295 39377
296 39377
297 39377
298 39377
299 39377

20 CFR

404 37970
416 37970

21 CFR

20 38915
310 38915
314 38915
600 38915
601 37971
610 37971
680 37971
Proposed Rules:
601 38145
1100 37555
1140 37555
1143 37555

22 CFR

121 37974

24 CFR

Proposed Rules:
203 38410

25 CFR

83 ....37538, 37862

26 CFR

1 ....38940, 38941
Proposed Rules:
1 39397
301 39397
602 39397

27 CFR

Proposed Rules:
9 38147

28 CFR

527 38620
571 38622
Proposed Rules:
506 38658
810 39400

29 CFR

18 37539
Proposed Rules:
541 38516

31 CFR

Proposed Rules:
315 37539
353 37539
360 37539

32 CFR

323 39381

33 CFR

100 ....38394, 38397, 39382
117 ....39382, 39383
165 ....37540, 37542, 37545, 37976, 37978, 37980, 37982, 38623, 38941, 38943, 38944, 38946, 39383, 39384, 39386
Proposed Rules:
117 38417
165 ....37562, 39400, 39403

34 CFR

Proposed Rules:
668 39608
682 39608
685 39608

38 CFR

Proposed Rules:
4 39011

39 CFR

Proposed Rules:
957 37565
961 37567
966 37567

40 CFR

52 ....37985, 38400, 38403, 38625, 38951, 38959, 38966, 38969
60 38628
80 38284
180 ....37547, 38976, 38981
257 37988
262 37992
761 37994
Proposed Rules:
52 ....38152, 38419, 38423, 39020
87 37758
704 38153
1068 37758

41 CFR

301 37995
302 37995
303 37995
304 37995
305 37995
306 37995
307 37995
308 37995
309 37995
310 37995

42 CFR

Proposed Rules:
410 39200
412 39200
413 37808
416 39200
419 39200

44 CFR

64 37996

45 CFR

155 38652

46 CFR

503 37997
Proposed Rules:
501 38153
502 38153

47 CFR

1 ....38653, 38812
2 38812
15 37551
17 37552
20 38653
25 38812
27 38812
74 38812
76 38001
78 38812
80 38812
87 38812
90 38812
97 38812
101 38812
Proposed Rules:
2 38316
8 38424
15 38316
73 38158
74 38158
80 38316
90 38316
97 38316
101 38316

48 CFR

Ch. 1 ....38292, 38313
1 ....38293, 38306
2 38293
3 38293
4 38293
5 38307
6 38293
7 38293
8 38293
9 ....38293, 38309
10 38293
12 ....38293, 38311
13 ....38293, 38311
15 ....38293, 38312
16 38293
17 38293
18 38311
19 38293
22 ....38293, 38307
25 38293
28 38293
30 38293
42 38293
50 38293
52 ....38293, 38306, 38309, 38312
53 38293

49 CFR

219 38654
390 37553
Proposed Rules:
1201 39021
1241 39045
1242 39045
1243 39045
1244 39045
1245 39045
1246 39045
1247 39045
1248 39045

50 CFR

21 38013
300 38986
622 38015
635 38016
679 38017
Proposed Rules:
17 37568
219 39542

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 533/P.L. 114–28
To revoke the charter of incorporation of the Miami Tribe of Oklahoma at the request of that tribe, and for other purposes. (July 6, 2015; 129 Stat. 420)

H.R. 615/P.L. 114–29
Department of Homeland Security Interoperable Communications Act (July 6, 2015; 129 Stat. 421)

H.R. 893/P.L. 114–30
Boys Town Centennial Commemorative Coin Act (July 6, 2015; 129 Stat. 424)

Last List July 2, 2015

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.