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FEDERAL REGISTER

Vol. 79 Monday,
No. 51 March 17, 2014

Pages 14609–14976

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2014–N–0108]

New Animal Drug Applications; Confidentiality of Data and Information in a New Animal Drug Application File

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation regarding the confidentiality of data and information in and about new animal drug application files to change when certain approval-related information will be disclosed by the Agency. This change will ensure that the Agency is able to update its list of approved new animal drug products within the statutory timeframe. It will also permit more timely public disclosure of approval-related information, increasing the transparency of FDA decision making in the approval of new animal drugs.

DATES: This rule is effective July 30, 2014. Submit either electronic or written comments by June 2, 2014. If FDA receives no significant adverse comments within the specified comment period, the Agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0108, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0108 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Scott Fontana, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 512(i) (21 U.S.C. 360b(i)) was added to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by the Animal Drug Amendments of 1968 (Pub. L. 90–399). Section 512(i) requires the conditions and indications of use of a new animal drug to be published in the **Federal Register** upon approval of a new animal drug application (NADA) filed under section 512(b) of the FD&C Act.

In 1974, FDA revised its regulations regarding the confidentiality of information in applications in § 135.33a (21 CFR 135.33a) to include provisions of the Freedom of Information Act (Pub. L. 89–487). That revision established that public disclosure by the Agency of certain data and information in an NADA file could not occur before the **Federal Register** notice of approval published (39 FR 44653, December 24, 1974). Shortly thereafter, § 135.33a was redesignated as § 514.11 (21 CFR 514.11) (40 FR 13802 at 13825, March 27, 1975).

In 1988, the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) added section 512(n)(4)(A) of the FD&C Act, which states that the Agency shall publish a list of approved new animal drug products and revise that list every 30 days to include each new animal drug that has been approved during that 30-day period. This list, as well as related patent information and marketing exclusivity periods, is contained in a document generally known as the ''Green Book,'' available at the Agency's public Web site at *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts.*

The editorial and clearance processes for publishing the **Federal Register** notice announcing the approval of an NADA varies from 1 to 2 months after the approval letter is issued to the applicant. Consequently, the addition of newly approved product information to the ''Green Book'' and public disclosure of certain other approval-related information at the Agency's public Web site is delayed until after that **Federal Register** notice is published. Such other approval-related information may include the summary of information forming the basis for approval (known also as the Freedom of Information Summary) and documentation of environmental review. Trade and proprietary information in the application file remains confidential and is not disclosed.

FDA is issuing this direct final rule amending § 514.11 to change the time when certain approval-related information in an NADA file will be publicly disclosed, from when notice of the approval is published in the **Federal Register** to when the application is approved. This change will ensure that the Agency is able to update the ''Green Book'' within the 30-day statutory timeframe (see section 512(n)(4)(A)(ii) of the FD&C Act). It will also permit more timely public disclosure of certain approval-related information following sponsor notification of application approval, increasing the transparency of

Agency decision making in the approval of new animal drugs.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. FDA is amending § 514.11 to change the time when certain approval-related information in an NADA file will be publicly disclosed to ensure that the Agency is able to update the ''Green Book'' within the 30-day statutory timeframe. This rule is intended to make noncontroversial changes to existing regulations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule and this direct final rule are substantively identical. The companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

FDA is providing a comment period for the direct final rule of 75 days after the date of publication in the **Federal Register**. If FDA receives any significant adverse comment, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, the Agency will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the direct final rule will not be considered significant or adverse under this procedure. For example, a comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA does not receive significant adverse comment in response to the direct final rule, the Agency will publish a document in the **Federal Register** confirming the effective date of the final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**.

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at: *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

III. Legal Authority

FDA is issuing this direct final rule under section 512(c) of the FD&C Act. This section gives the Secretary of Health and Human Services the authority to approve new animal drug applications. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this direct final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this direct final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this direct final rule would not impose any compliance costs on the sponsors of animal drug products that are currently marketed or in development, the Agency certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities.

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

VI. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the direct final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency concludes that the direct final rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. 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.*

List of Subjects in 21 CFR Part 514

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

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 356a, 360b, 371, 379e, 381.

■ 2. In § 514.11, revise paragraphs (b), (d), (e) introductory text, and (e)(2)(ii) introductory text to read as follows:

§ 514.11 Confidentiality of data and information in a new animal drug application file.

* * * * *

(b) The existence of an NADA file will not be disclosed by the Food and Drug Administration before the application has been approved, unless it has been previously disclosed or acknowledged.

* * * * *

(d) If the existence of an NADA file has been publicly disclosed or acknowledged before the application has been approved, no data or information contained in the file is available for public disclosure, but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, i.e., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After an application has been approved, the following data and information in the NADA file are immediately available for public disclosure unless extraordinary circumstances are shown:

* * * * *

(2) * * *

(ii) For an NADA approved after July 1, 1975, a summary of such data and information prepared in one of the following two alternative ways shall be publicly released when the application is approved.

* * * * *

Dated: March 7, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05430 Filed 3–14–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0439; FRL–9907–55–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Stage II Vapor Recovery Program and Control of Air Pollution From Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) that control emissions of volatile organic compounds (VOCs) at gasoline dispensing facilities (GDFs) in Texas. The revisions were submitted to the EPA by the Texas Commission on Environmental Quality (TCEQ) on October 31, 2013 and address the maintenance and removal of Stage II vapor recovery equipment at GDFs. The EPA is also approving related revisions to the Stage II SIP narrative that pertain to the maintenance and removal of Stage II vapor recovery equipment and demonstrate that the absence of Stage II equipment in the Beaumont-Port Arthur (BPA), Dallas-Fort Worth (DFW) and Houston-Galveston Brazoria (HGB) areas, and in El Paso County would not interfere with attainment of the national ambient air quality standards, reasonable further progress or any other requirement of the Clean Air Act (CAA or Act). The EPA is approving these revisions pursuant to sections 110 and 202 of the Act and consistent with the EPA's guidance.

DATES: This final rule is effective on April 16, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0439. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD–L); telephone (214) 665–6521; email address *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. Background
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

The background for today's final rule is discussed in our December 30, 2013 proposal to approve revisions to the Texas SIP (78 FR 79340). In that action, we proposed to approve the Texas SIP revisions submitted by the TCEQ on October 31, 2013, which specify that new GDFs would not be required to install Stage II equipment and provide removal (decommissioning) procedures that existing GDFs in the 16 counties [1] must complete by August 31, 2018. The revisions to the Stage II SIP describe the removal of Stage II equipment at GDFs and require maintenance of the Stage II equipment until decommissioning occurs. The revisions to the SIP narrative also include a demonstration that the removal of, or failure to install, Stage II equipment in the 16 counties is consistent with section 110(l) of the Act which precludes approval of revisions to the SIP that contribute to nonattainment or interfere with maintenance of any National Ambient Air Quality Standard.

Our December 30, 2013 proposal provides a detailed description of the revisions and the rationale for EPA's proposed actions, together with a

[1] The four areas in Texas where Stage II is required comprise 16 counties: BPA, containing Hardin, Jefferson and Orange counties; DFW, involving Collin, Dallas, Denton and Tarrant counties; El Paso County; and HGB, containing Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

discussion of the opportunity to comment. The public comment period for these actions closed on January 29, 2014. See the Technical Support Document in the docket for this rulemaking and our proposal at 78 FR 79340 for more information. We did not receive any comments regarding our proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving revisions to the Texas SIP that control emissions of VOCs and pertain to the maintenance and removal of Stage II vapor recovery equipment submitted on October 31, 2013. We are approving revisions to the following sections within 30 TAC 115: 115.240, 115.241, 115.242, 115.243, 115.244, 115.245, 115.246, 115.247, and 115.249. The EPA is also approving related revisions to the Stage II SIP narrative that address the maintenance and removal of Stage II equipment, and demonstrate that the removal of, or failure to install Stage II equipment in the BPA, DFW, and HGB areas, and in El Paso County, meets section 110(l) of the Act. The EPA is approving these revisions in accordance with sections 110 and 202 of the Act and consistent with the EPA's guidance.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 25, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c) the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 115.240—115.247 and Section 115.249.

■ b. In paragraph (e) the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding a new entry to the end of the table for ''Stage II Vapor Recovery Program SIP.''

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* *	* *		* *	*
Section 115.240	Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.241	Emission Specifications	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.242	Control Requirements	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.243	Alternate Control Requirements	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.244	Inspection Requirements	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.245	Testing Requirements	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.246	Recordkeeping Requirements	10/9/2013	3/17/14 [Insert FR page number where document begins].	
Section 115.247	Exemptions	10/9/2013	3/17/14 [Insert FR page number where document begins].	
* *	* *		* *	*
Section 115.249	Counties and Compliance Schedules.	10/9/2013	3/17/14 [Insert FR page number where document begins].	
* *	* *		* *	*

* * * * * (e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
* *	* *		* *	*
. Stage II Vapor Recovery Program SIP.	Statewide	10/9/2013	3/17/14 [Insert FR page number where document begins].	

[FR Doc. 2014–05100 Filed 3–14–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 62, and 70

[EPA–R07–OAR–2013–0724; FRL–9907–79–Region 7]

Approval and Promulgation of Implementation Plans, State Plans for Designated Facilities and Pollutants, and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Missouri State Implementation Plan (SIP), the 40 CFR part 62 state plans (111(d)), and the 40 CFR part 70 operating permits program, which were received on August 25, 2011, May 8, 2012, and February 11, 2013, respectively. The revisions submitted by the state move definitions currently in individual rules into one rule and eliminates the risk of the same term being defined differently for different rules. This action provides more clarity for the regulated public. These revisions do not have an adverse affect on air quality. EPA's approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule is effective May 16, 2014, without further notice, unless EPA receives adverse comment by April 16, 2014. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0724, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: higbee.paula@epa.gov.*
3. *Mail or Hand Delivery:* Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2013–0724. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT:

Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219, or at 913–551–7028, or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is taking direct final action to amend Missouri's SIP, 111(d) plan, and operating permits program by approving the state's requests to amend 10 CSR 10–6.020, *Definitions and Common Reference Tables.* As detailed in the Technical Support Document which is a part of this docket, the revisions to 10 CSR 10–6.020 *Definitions and Common Reference Tables* largely incorporate several non-substantive error corrections of acronym usage, clarifications of definition applicability, grammatical corrections, and minor clarifications of language as well as the addition of definitions from individual rules. In determining its action, EPA reviewed the submissions and additional information provided by the state to ensure that they met Federal requirements and did not adversely affect the stringency of the SIP, the 40 CFR part 62, or the 40 CFR part 70 program. EPA notes that the state reviewed and revised all definitions as needed to insure consistency, unless a specific reason existed for a definition to be unique to a specific rule such as the construction permits rule. In addition, the definitions used in state rules were reviewed to insure as much consistency as possible with the Federal definitions of the same terms, and revisions were made as necessary and appropriate, consistent with Federal requirements.

II. Have the requirements for approval of a SIP, part 62 and part 70 revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission has also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

The substantive requirements of 40 CFR part 62 and Title V of the 1990 CAA Amendments and 40 CFR part 70 have been met as well.

III. What action is EPA taking?

EPA is taking final action to approve this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP, 111(d) and operating permits revisions if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus Executive Order 13132 does not apply to this action. This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

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

A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 16, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 28, 2014.

Karl Brooks,

Regional Administrator, Region 7.

40 CFR parts 52, 62, and 70 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–6.020 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* *	*	*	* *	*
Chapter 6 Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.020	Definitions and Common Reference Tables.	2/28/13	3/17/14 *[insert **Federal Register** page number where the document begins]*.	
* *	*	*	* *	*

* * * * *

PART 62—[AMENDED]

■ 3. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri

■ 4. In § 62.6350 is amended by adding paragraph (b)(5) to read as follows:

§ 62.6350 Identification of plan.

* * * * *

(b) * * *

(5) A revision to Missouri's 111(d) plan to incorporate state regulation 10 CSR 10–6.020 Definitions and Common Reference Tables was state effective on February 28, 2013. The effective date of the amended plan is May 16, 2014.

* * * * *

PART 70—[AMENDED]

■ 5. The authority citation for part 70 continues to read as follows:

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

■ 6. Appendix A to part 70 is amended by adding paragraph (bb) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(bb) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, ''Definitions and Common Reference Tables'' on February 11, 2013. The state effective date is February 28, 2013. This revision is effective May 16, 2014.

* * * * *

[FR Doc. 2014–05685 Filed 3–14–14; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 79, No. 51
Monday, March 17, 2014

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA–2013–0002]

RIN 3245–AG53

Microloan Program Expanded Eligibility and Other Program Changes

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend certain existing regulations for the Microloan Program. The Microloan Program assists women, low income, veteran, and minority entrepreneurs, and others capable of operating a small business that are in need of small amounts of financial assistance. Specifically, this proposed rule would allow any Microloan Program Intermediary to make microloans (loans of $50,000 or less) to businesses with an Associate who is on probation or parole, except in limited circumstances; it would increase the minimum number of loans that microloan Intermediaries must make annually; and it would remove the requirement that the Microloan Revolving Fund (MRF) and the Loan Loss Reserve Fund (LLRF) be held in interest-bearing Deposit Accounts. In addition, the proposed rule includes technical amendments that would conform the regulations to current statutory authority.

DATES: Comments must be received on or before May 16, 2014.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG53, docket number [SBA–2013–0002] by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Jody Raskind, Chief, Microenterprise Development Branch, U.S. Small Business Administration, 409 3rd Street SW., 8th floor, Washington, DC 20416.
- Hand Delivery/Courier: Jody Raskind, Chief, Microenterprise Development Branch, U.S. Small Business Administration, 409 3rd Street SW., 8th floor, Washington, DC 20416.

All comments will be posted on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Jody Raskind, Chief, Microenterprise Development Branch, U.S. Small Business Administration, 409 3rd Street SW., 8th Floor, Washington, DC 20416, or send an email to *jody.raskind@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, Chief, Microenterprise Development Branch, at (202) 205–7076 or *Jody.Raskind@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) (''Act'') authorizes SBA's Microloan Program, which assists small businesses that need small amounts of financial assistance. Under the program, SBA makes direct loans to Intermediaries, as defined in § 120.701(e), that use the loan proceeds to make microloans to eligible borrowers. SBA is also authorized to make grants to Intermediaries to be used for marketing, management, and technical assistance.

This proposed rule includes several regulatory changes, as well as technical amendments that conform the regulations to current statutory authority. SBA is proposing these changes in order to clarify certain program requirements that have caused confusion and in response to feedback from existing Intermediaries.

II. Section by Section Analysis

Intermediaries must keep their Microloan Revolving Funds (MRFs) and Loan Loss Reserve Funds (LLRFs) at insured depository institutions. See 13 CFR 120.701(a), 120.709, and 120.710. SBA proposes to revise the definition of insured depository institution in § 120.701(d) to specifically include Federally-insured credit unions. The current definition specifies only insured banks and savings associations. SBA is proposing this change to clarify inconsistent interpretations of this definition through a clear statement that such credit unions are included.

Section 120.707(a), What conditions apply to loans by Intermediaries to Microloan borrowers?, sets forth the eligibility conditions placed on loans between Intermediaries and microloan borrowers. However, the current language of § 120.707(a) has caused some confusion among Intermediaries as to which businesses are eligible for microloans. Currently, § 120.707(a) states that ''An intermediary may make Microloans to any small business eligible to receive financial assistance under this part.'' SBA interprets this language to mean that microloan borrowers must meet the same eligibility criteria as borrowers under the Agency's 7(a) and 504 business loan programs (except that nonprofit child care businesses are eligible for microloans). See 13 CFR 120.110. The proposed rule would revise this language to clarify that microloan borrowers must meet the same eligibility requirements as borrowers in the 7(a) and 504 programs, except as specifically set forth in § 120.707(a).

This rule would also amend § 120.707(a) to allow Intermediaries to make loans to businesses with an Associate, as defined in § 120.10, who is currently on probation or parole, except in limited circumstances. Businesses with an Associate who is incarcerated, on probation, on parole, or currently under indictment for a felony or a crime of moral turpitude are ineligible for assistance under the 7(a) or 504 programs under § 120.110(n); therefore, such businesses are currently ineligible for assistance under the Microloan Program as well. SBA is proposing this change as a result of a regulatory review conducted in connection with SBA's participation on the Federal Interagency Reentry Council (Reentry Council), *http://www.nationalreentryresourcecenter.org/reentry-council.* The Reentry Council is an interagency task force led by the Department of Justice which seeks to explore ways in which agencies can reduce the Federal barriers to successful reentry of formerly incarcerated individuals in order to assist them in becoming productive citizens. Formerly incarcerated individuals who maintain

steady employment are less likely to return to jail; however, many formerly incarcerated individuals have difficulty finding steady employment. The Microloan Program offers an opportunity for such individuals who meet the Intermediaries' lending criteria to receive financing and technical assistance to start their own businesses. Under the amended rule, businesses with an Associate on probation or parole for an offense involving fraud or dishonesty would be ineligible, as would child care businesses with an Associate on probation or parole for an offense against children. Also, under the proposed rule, individuals who are currently incarcerated or under indictment would remain ineligible for microloans.

In § 120.709, What is the Microloan Revolving Fund?, and § 120.710(a), What is the Loan Loss Reserve Fund?, SBA proposes to remove the requirement that Deposit Accounts, as defined in § 120.701(a), be interest-bearing. SBA is proposing this change after receiving information from several Intermediaries that interest-bearing accounts are not readily available or require Intermediaries to pay a fee. This proposed rule eliminates the requirement that the Deposit Accounts be interest-bearing and, as a result, would reduce the burden and costs faced by microloan Intermediaries.

In § 120.712, How does an Intermediary get a grant to assist Microloan borrowers?, SBA proposes to remove paragraph (c) to conform to current statutory authority. Section 120.712(c) states that Intermediaries that make at least 50 percent of their loans to small businesses located in or owned by residents of Economically Distressed Areas are not subject to the 25 percent grant contribution requirement. This Intermediary contribution waiver authority was removed from the statute in 2010. See 15 U.S.C. 636(m)(4), as amended by Public Law 111–240. Paragraphs (d) and (e) would be redesignated as paragraphs (c) and (d).

SBA proposes to add a new § 120.716, What is the minimum number of loans an Intermediary must make each Federal fiscal year?, which would contain the minimum loan requirement for Intermediaries. The minimum loan requirement is currently contained in § 120.1425(d)(2), Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs, which is located in Subpart I, ''Risk-Based Lender Oversight'' (including oversight of Intermediaries). SBA is proposing to move the minimum loan requirement to Subpart G, which contains the other regulations specific to the Microloan Program. The new § 120.716 would also specifically state that Intermediaries that do not meet the minimum loan requirement are not eligible to receive new grant funding. This is consistent with SBA's current policy and practice. SBA determines whether an Intermediary is eligible for grant funding based on the number of microloans made in the previous Federal fiscal year. An Intermediary that is ineligible for a grant due to failure to make the minimum number of microloans in the previous Federal fiscal year may become eligible for grant funding the following year by meeting the minimum number of loans for the current year. Section 120.1425(d)(2) would be revised to include a cross reference to the new § 120.716.

Proposed § 120.716 would also increase the minimum number of microloans that Intermediaries must close and fund each year. Currently, Intermediaries must close and fund (i.e., make an initial disbursement on) at least four loans each Federal fiscal year. Under the proposed rule, the minimum number of microloans will gradually increase to twelve per year. In FY2015, the minimum loan requirement will be six microloans. In FY2016, the requirement will increase to eight microloans. In FY2017 and thereafter, the requirement will increase to a minimum of twelve microloans each year.

SBA proposes to increase the minimum loan requirement for several reasons. First, many existing Intermediaries have repeatedly requested an increase in the requirement so that more grant funding is available for those Intermediaries that generate higher numbers of loans. Second, increasing the minimum number of loans will expand access to capital by increasing the total number of microloans made each year by Intermediaries. Finally, SBA believes that a minimum requirement of twelve loans, which represents approximately one microloan per month, is a reasonable standard that active lenders should be able to meet. Increasing the minimum loan requirement will require Intermediaries that currently make less than the minimum number of microloans per year to increase their lending. SBA proposes a graduated increase in the minimum loan requirement to allow Intermediaries sufficient time to build scale to meet the higher requirements.

SBA invites comments on all aspects of the proposed rule and, in particular, whether the proposed minimum loan requirements are achievable without sacrificing prudent lending standards. SBA would also like comments regarding the limitation on making of microloans to businesses with an Associate who is on probation or parole for certain offenses, and on how Intermediaries would comply with this requirement.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is a ''significant'' regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

A. Regulatory Objective of the Proposal

The proposed rule would allow any Microloan Program Intermediary to make microloans (loans of $50,000 or less) to businesses with an Associate who is on probation or parole; it increases the minimum number of loans that microloan Intermediaries must make annually; and it removes the requirement that the Microloan Revolving Fund (MRF) and the Loan Loss Reserve Fund (LLRF) be held in interest-bearing Deposit Accounts. In addition, the proposed rule includes technical amendments that conform the regulations to current statutory authority.

B. Benefits of the Rule

The small business borrowers that receive loans from Microloan Program Intermediaries directly benefit from the Microloan Program. The most significant benefit to small business borrowers as a result of this proposed rule is increased access to capital. This proposed rule would allow Microloan Program Intermediaries to make loans to businesses with an Associate who is on probation or parole, except in limited circumstances. This change would meet the unmet financing and employment opportunity needs of this segment of the population.

Additionally, this proposed rule would require Intermediaries to meet a higher standard in terms of minimum loan production. Once fully implemented, this new standard will represent an increase of approximately 400 microloans per year. During FY 2012, 77 Intermediaries (approximately half of Intermediaries) made fewer than 12 microloans. As proposed,

Intermediaries would be required to increase the number of microloans made each year in order to receive grant funding, which is used to provide technical assistance to borrowers and prospective borrowers. As a result, this proposed rule change would also increase the number of microborrowers receiving training with limited technical assistance resources. Finally, the rule change would encourage the expansion of Intermediaries into new lending territories to broaden the base of customers from which borrowers can be drawn. This expansion represents geographic growth in availability of capital for small business borrowers.

The final element of the proposed rule change, the removal of the interest-bearing requirement on deposit accounts, will ultimately mean more financing capital and technical assistance training for small business borrowers. Banks often charge monthly fees for use of interest-bearing deposit accounts. By allowing microloan Intermediaries to use non-interest bearing accounts, the Intermediaries will have additional resources to use toward providing loans or technical assistance.

C. Costs of the Rule

The proposed rule changes would impact the approximately 77 Intermediaries making fewer than twelve microloans per year. However, the graduated introduction of the higher minimum loan requirement will lessen the cost faced by the Intermediaries by allowing additional time to ramp up loan production. Because the financing capital is provided by SBA, the only cost to the Intermediaries will be the operating expenses associated with the increased number of loans that are not covered by the interest rate spread allowed by the program.

SBA does not anticipate that the proposed rule changes will impact the program's subsidy model. For loans to businesses with an associate on parole or probation, SBA believes that Intermediaries will continue to make prudent lending decisions regardless of whether a micro-borrower is a member of the newly eligible population. Because SBA does not expect the new population of borrowers to have a different repayment rate than the rest of the borrowers, inclusion of this population in the model will not impact subsidy.

Since the subsidy models do not use as an input the number of microloans made by Intermediaries to micro-borrowers, increasing the minimum number of loans made per year will not impact subsidy. Finally, SBA believes that a change in the interest-bearing nature of the MRF and LLRF accounts will not impact subsidy. The MRF and LLRF are established for each loan made to an intermediary. MRF consists of loan proceeds from SBA to the Intermediary. Microloans to micro-borrowers and microloan repayments are processed through this account. A Loan Loss Reserve Fund (LLRF) is established and maintained at 15% of the outstanding balance of microloans owed to the Intermediary under the corresponding loan from SBA. In the event that an Intermediary defaults on its payments or goes out of business or ceases to participate in the Microloan program, SBA will have right to the proceeds in the MRF and LLRF up to the amount due to SBA under the program.

D. Alternatives

SBA received a number of recommendations and support for the proposed changes on numerous occasions from Intermediaries. Such comments came during conference calls, training conferences, and in some cases, letters from Intermediaries. The Intermediaries that have provided input to SBA seek more efficient ways to use limited resources, ensure that resources are going where most needed, and to reduce administrative costs. The proposed regulatory changes will move the Microloan Program to the next level of market expansion, cost reduction, and better utilization of taxpayer dollars. SBA believes that this rule is SBA's best available means for increasing access to capital for women, low income individuals, minority entrepreneurs, and other small businesses which need small amounts of financial assistance. SBA also believes that it will encourage self-employment as an option for those not easily employable due to mistakes in their past.

Executive Order 12988

This action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that the proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Agency's commitment under the Executive Order to reduce the number and burden of regulations.

A description of the need for this regulatory action and benefits and costs associated with this action is included above in the Regulatory Impact Analysis under Executive Order 12866. SBA discussed implementing these proposed rule changes with Microloan Program Intermediary associations and representatives from Intermediaries during conference calls. In addition, these issues were discussed during the Microloan Training Conference with Intermediaries in 2012. Most of these proposed changes were specifically requested by Intermediaries.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose any new reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Microloan Program Electronic Reporting System (MPERS) is approved under OMB Control Number 3245–0352, ICR Reference Number 201011–3245–004 and the SBA Lender Microloan Intermediary and NTAP Reporting Requirements are approved under OMB Control Number 3245–0365, ICR Reference Number 201203–3245–001.

Regulatory Flexibility Act 5 U.S.C. 601–612

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires administrative agencies to consider the

economic impact of their actions on small entities, which includes small businesses, small nonprofit businesses, and small local governments. The RFA requires agencies to prepare a regulatory flexibility analysis, which describes the economic impact that the rule will have on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities.

SBA has determined that this rule affects a substantial number of small entities, but that it will not have significant impact on those entities. All of the Intermediaries that participate in the Microloan program are small nonprofit or quasi-governmental entities. Approximately half of the 148 existing Intermediaries will be required to increase loan production in order to meet the new minimum loan requirements. SBA anticipates that approximately 15 of these Intermediaries may choose not to participate in the Microloan Program as result of the increased lending requirement. These 15 Intermediaries made fewer than 4 loans in FY 2012 and may choose not to increase loan production to meet the higher requirements. These entities are making so few loans, and generating so little revenue from those loans, that exiting the program will not cause a significant economic impact.

SBA estimates that entities leaving the program will lose approximately $15,000 in annual revenue associated with microloans that would have been made under the SBA Microloan Program. The $15,000 represents approximate annual interest and fee income for 3 microloans of $50,000. An organization making just three microloans a year is not sustainable and must rely on other sources of income to operate. Additionally, these entities are already out of compliance with program requirements and as a result, do not receive grants through the Microloan Program.

The graduated introduction of the minimum loan requirement will allow Intermediaries additional time to ramp up loan production. The proposed rule would require six microloans in 2015, eight microloans in 2016, and twelve loans per year in 2017 and thereafter. This graduated approach allows Intermediaries to adapt business practices to meet higher loan requirements. For example, rural Intermediaries may seek out new ways to utilize technology to more efficiently serve rural areas and therefore, make more microloans. Additionally, the graduated approach allows Intermediaries to anticipate and seek out future funding needs to meet increased microloan requirements. Finally, SBA will offer a series of training events for Intermediaries to share best practices related to building up an organization's capacity to make more microloans.

Accordingly, the Administrator of SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact either on Microloan Intermediaries, or on microborrowers that receive funding from Microloan Intermediaries.

List of Subjects in 13 CFR Part 120

Community development, Equal employment opportunity, Loan programs-business, Reporting and recordkeeping requirements, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR Part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. Law 111–5, 123 Stat. 115, Pub. Law 111–240, 124 Stat. 2504.

■ 2. Amend § 120.701 by revising paragraph (d) to read as follows:

§ 120.701 Definitions.

* * * * *

(d) *Insured depository institution* means any Federally insured bank, savings association, or credit union.

* * * * *

■ 3. Amend § 120.707 by revising paragraph (a) to read as follows:

§ 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

(a) Except as otherwise provided in this paragraph, an Intermediary may only make Microloans to small businesses eligible to receive financial assistance under this part. A borrower may also use Microloan proceeds to establish a nonprofit child care business. An Intermediary may also make Microloans to businesses with an Associate who is currently on probation or parole, provided, however, that the Associate is not on probation or parole for an offense involving fraud or dishonesty or, in the case of a child care business, is not on probation or parole for an offense against children. Proceeds from Microloans may be used only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. SBA does not review Microloans for creditworthiness.

* * * * *

■ 4. Amend § 120.709 by revising the first sentence to read as follows:

§ 120.709 What is the Microloan Revolving Fund?

The Microloan Revolving Fund (''MRF'') is a Deposit Account into which an Intermediary must deposit the proceeds from SBA loans, its contributions from non-Federal sources, and payments from its Microloan borrowers. * * *

* * * * *

■ 5. Amend § 120.710 by revising paragraph (a) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

(a) *General.* The Loan Loss Reserve Fund (''LLRF'') is a Deposit Account which an Intermediary must establish to pay any shortage in the MRF caused by delinquencies or losses on Microloans.

* * * * *

§ 120.712 [Amended]

■ 6. In § 120.712, remove paragraph (c) and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ 7. Add new § 120.716 to read as follows:

§ 120.716 What is the minimum number of loans an Intermediary must make each Federal fiscal year?

(a) *Minimum loan requirement.* Intermediaries must close and fund the required number of microloans per year (October 1–September 30) as follows:

(1) For fiscal year 2015, six microloans,

(2) For fiscal year 2016, eight microloans, and

(3) For fiscal years 2017 and following, twelve microloans per year.

(b) *Failure to meet minimum loan requirement.* Intermediaries that do not meet the minimum loan requirement are not eligible to receive new grant funding.

■ 8. Amend § 120.1425 by revising paragraph (d)(2) to read as follows:

§ 120.1425 Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

* * * * *

(d) * * *

(2) Failure to close and fund the required number of microloans per year under § 120.716.

* * * * *

Dated: March 6, 2014.

Marianne O. Markowitz,

Acting Administrator.

[FR Doc. 2014–05549 Filed 3–14–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

[Docket No.: FAA–2012–1058; Notice No. 14–02]

RIN 2120–AK09

Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA is considering amending its drug and alcohol testing regulations to require drug and alcohol testing of certain maintenance personnel outside the United States. Specifically, the FAA is considering requiring certain air carriers to ensure that all employees of certificated repair stations, and certain other maintenance organizations that are located outside the United States, who perform safety-sensitive maintenance functions on aircraft operated by that air carrier are subject to a drug and alcohol testing program that has been determined acceptable by the FAA Administrator and is consistent with the applicable laws of the country in which the repair station is located. Safety-sensitive maintenance functions include aircraft maintenance and preventive maintenance duties. This action is necessary to address a statutory mandate. The FAA has determined that it needs additional information to develop a proposed rule and assess its likely economic impact. This notice invites comments on a variety of issues related to proposing drug and alcohol testing requirements for the relevant employees of covered maintenance providers.

DATES: Send comments on or before May 16, 2014.

ADDRESSES: Send comments identified by docket number FAA–2012–1058 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy. http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM–800, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8442; facsimile (202) 267–5200; email: *drugabatement@faa.gov.*

For legal questions concerning this action, contact Neal O'Hara, Attorney, Regulations Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5348.

For cost and benefit questions concerning this action, contact Nicole Nance, Office of Aviation Policy and Plans, APO–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3311.

SUPPLEMENTARY INFORMATION:

Comments Invited

See the ''Additional Information'' section for information on how to comment on this ANPRM and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). 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. In carrying out part A (Air Commerce and Safety) of subtitle VII, the Administrator is directed to act consistently with obligations of the United States Government under an international agreement and to consider applicable laws and requirements of a foreign country. See 49 U.S.C. 40105(b)(1)-(2). Additionally, section 308(d)(2) of the FAA Modernization and Reform Act of 2012 (the Act), 49 U.S.C. 44733 requires that:

> Not later than 1 year after the date of enactment of this section, the [FAA] Administrator shall promulgate a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft are subject to an alcohol and controlled substances testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located.[1]

In 49 U.S.C. 44733(d)(2) Congress did not address employees of maintenance providers located outside the United States that are not certificated by the FAA. However, authorized persons performing safety-sensitive maintenance functions on aircraft operated by part 121 air carriers in accordance with 14 CFR 43.17 are substantially similar to those employees of part 145 repair stations located outside the United States for whom the FAA has been directed to propose drug and alcohol testing. Because of their substantial similarity, under the authority of 49 U.S.C. 44701(a)(5), which requires the Administrator to promote the safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security, we request comment on the application of these requirements to this group/category of authorized persons.

[1] Except when quoting the text of section 308 of the Act, the FAA uses the term ''drug'' rather than ''controlled substance'' in this ANPRM, because an illegal substance in the United States may be legal to use in the country in which a covered maintenance provider is located.

I. Overview of Advance Notice of Proposed Rulemaking (ANPRM)

The Act requires the FAA to propose alcohol and drug testing requirements for employees of part 145 repair stations located outside the United States who perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers, as the FAA currently does not require drug or alcohol testing for such personnel. Currently, as required under 14 CFR part 120, employees performing aircraft maintenance and preventive maintenance duties on part 121, 135 or 91.147 certificated air craft within the U.S. are required to be subject to drug and alcohol testing. The FAA believes Congress intended that preventive maintenance is a safety-sensitive maintenance function as currently described under 14 CFR part 120, therefore safety-sensitive maintenance functions include both aircraft maintenance and preventive maintenance duties.[2]

While Congress did not address maintenance providers that are not certificated by the FAA in 49 U.S.C. 44733(d)(2), authorized persons performing safety-sensitive maintenance functions on aircraft operated by part 121 air carriers in accordance with 14 CFR 43.17, are substantially similar to the employees of part 145 repair stations in other countries for whom the FAA must propose drug and alcohol testing. Therefore, the FAA is also considering whether to require each part 121 air carrier to ensure that authorized persons performing safety-sensitive maintenance functions on aircraft operated by that part 121 air carrier in accordance with 14 CFR 43.17, and is not also a certificated part 145 repair station, are subject to drug and alcohol testing programs that meet the same or similar requirements as programs for their counterparts at part 145 repair stations located outside the United States.

Currently, there are approximately 120 part 145 repair stations located outside the United States whose employees perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers. There are also organizations in one other country outside the United States that are not part 145 repair stations, but whose employees perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers in accordance with 14 CFR 43.17.

II. Background

A. Statement of the Issue

The FAA's drug and alcohol testing regulations, contained in 14 CFR part 120, do not extend to companies or individuals who perform safety-sensitive functions, including, but not limited to, aircraft maintenance and preventive maintenance, outside of the United States. They currently apply to all air carriers and operators authorized to conduct operations under part 121 or part 135; all air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; all air tour operators as defined in 14 CFR 91.147; and all part 145 certificate holders and contractors who employ individuals who perform, either directly or by contract, including subcontract at any tier, any of the following safety-sensitive functions: Flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatcher duties, aircraft maintenance and preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties. Additionally, the regulations do not permit any part of the testing process, including specimen collection, to be conducted outside the United States. As described above, the Act requires that the FAA propose extending drug and alcohol testing to employees of part 145 repair stations located outside the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft in a manner consistent with local laws.

B. International Civil Aviation Organization (ICAO) Standards and Recommended Practices

International Civil Aviation Organization (ICAO) standards do not presently require ICAO Member States to establish (or direct industry to establish) testing programs to deter or detect inappropriate drug and alcohol use by aviation personnel with safety-sensitive responsibilities. However, a number of ICAO standards and recommended practices address misuse of drugs and alcohol by aviation personnel and recognize the potential hazard that such misuse may pose to aviation safety. For example, the recommended practice in paragraph 1.2.7.3 of Annex 1 (Personnel Licensing) to the Convention on International Civil Aviation (the ''Chicago Convention''), states that ICAO Member States ''. . . should ensure, as far as practicable, that all licen[s]e holders who engage in any kind of problematic use of substances are identified and removed from their safety-critical functions.'' ICAO further recommends that ''[r]eturn to the safety-critical functions may be considered after successful treatment or, in cases where no treatment is necessary, after cessation of the problematic use of substances and upon determination that the person's continued performance of the function is unlikely to jeopardize safety.'' In addition, the standard in paragraph 2.5 of Annex 2 (Rules of the Air) to the Chicago Convention states that ''[n]o person whose function is critical to the safety of aviation (safety-sensitive personnel) shall undertake that function while under the influence of any psychoactive substance, by reason of which human performance is impaired. No such person shall engage in any kind of problematic use of substances.'' See also paragraphs 1.2.6, 1.2.7, 6.3.2.2, 6.4.2.2, and 6.5.2.2 of Annex 1 to the Chicago Convention.

C. History

The FAA's original drug testing rule, published in 1988 (53 FR 47024), required drug testing of certain aviation personnel, including some that performed safety-sensitive functions outside the United States. However, the effective date of the rule with respect to testing outside the territory of the United States was deferred on a number of occasions to permit related negotiations with governments and international organizations to continue in an orderly and effective fashion. In 1994, the FAA published two final rules related to drug and alcohol testing. *Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities* (59 FR 7380) established the FAA's alcohol testing requirements. The alcohol testing rule was not extended to employees located outside the territory of the United States due to significant logistical issues and possible conflicts with local laws. *Anti-Drug Program for Personnel Engaged in Specified Aviation Activities* (59 FR 42922) amended certain provisions of the existing FAA drug testing rules to comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991. The drug testing requirements were not extended to employees located outside of United States territory due to significant practical and legal concerns. Rather, the rule specifically stated that no employee located outside of the United States would be tested for drugs. Additionally, in 1994, the FAA published a Notice of Proposed Rulemaking (NPRM), *Antidrug Program and Alcohol Misuse*

[2] Alcohol and drug testing of employees of part 145 repair stations located in the United States who perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers is already required under 14 CFR part 120. The FAA does not anticipate making any changes as part of this rulemaking to its drug and alcohol testing requirements that apply to safety-sensitive personnel within the United States.

Prevention Program for Employees of Foreign Air Carriers Engaged in Specified Aviation Activities, to address requirements in the Omnibus Transportation Employee Testing Act of 1991. This NPRM required foreign air carriers operating into the U.S. to implement testing programs like those required of U.S. air carriers unless ''multilateral action was taken to support an international aviation environment free of substance abuse''. However, in 2000, the FAA withdrew the NPRM stating, ''For the foregoing reasons, the FAA is withdrawing the rulemaking proposed on February 15, 1994, and is leaving within the purview of each government the method chosen to respond to the ICAO initiatives. We will continue to view a multilateral response as the best approach to evolving issues in the substance abuse arena. Should the FAA subsequently determine, however, that the scope of the threat of substance abuse is not being adequately addressed by the international community, the FAA will take appropriate action, including the possible re-initiation of this rulemaking.''

D. Related Actions

Under 49 U.S.C. 44733(d)(1), Congress mandated that the Secretary of State and the Secretary of Transportation, acting jointly, request the governments of countries that are members of ICAO to establish international standards for alcohol and drug testing of persons that perform safety-sensitive maintenance functions on commercial air carrier aircraft. The FAA strongly supports the development of such international standards and believes that they would help deter and detect drug and alcohol use that could compromise aviation safety.

III. Discussion of Proposals Under Consideration

Although ICAO standards and many countries' aviation regulations prohibit the use of drugs and alcohol by certain aviation personnel in circumstances in which such use may threaten aviation safety, many countries either do not require testing of such personnel to verify compliance or do not extend such testing to maintenance personnel. Congress, however, has now enacted legislation that requires the FAA to propose a rule requiring that all Part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft, not just those in the United States, be subject to a drug and alcohol testing program that is acceptable to the Administrator and consistent with the applicable laws of the country in which the repair station is located.

The FAA is aware, however, that establishing drug and alcohol testing requirements for such personnel presents complex practical and legal issues and could impose potentially significant costs on industry. Therefore, the FAA is issuing this ANPRM, rather than an NPRM, to seek comments from the public, as well as interested governments, to help inform the development of a proposed rule and the analysis of its economic impact.

The FAA expects to propose to allow the testing process to take place outside the United States.[3] Any part of the testing process conducted outside the United States would need to be both acceptable to the Administrator and permitted under the applicable laws and regulations of the relevant foreign country or countries. The FAA believes that it would be less expensive and logistically simpler to conduct testing for the relevant employees of covered maintenance providers in the country where the covered maintenance provider is located or possibly in a nearby country.

The FAA understands that other countries may have a wide variety of laws and regulations concerning the use of and testing for alcohol and drugs. The FAA further understands that other countries' laws and regulations concerning other matters, such as personal privacy and employment, may affect whether and under what circumstances drug and alcohol testing may be conducted in those countries. Some countries might need to pass authorizing legislation before they could permit testing within their borders. The FAA also recognizes the diversity of policy, moral, and religious views that exist internationally regarding drug and alcohol use and testing.

The FAA seeks input from the public and interested governments to help inform the development of a proposed rule and the analysis of its economic impact. In responding to the requests for comment below, the FAA asks that commenters distinguish between responses relating to alcohol testing and those relating to drug testing, if the same comment does not apply to both.

A. Foreign Countries Laws and Regulations

To help the FAA expand its understanding of the laws and regulations of other countries that bear on drug and alcohol testing, the FAA requests the information described below regarding countries in which covered maintenance providers are located. It would be particularly helpful to receive the requested information regarding the countries' laws and regulations from the responsible government authorities of the relevant country, although private parties are also encouraged to provide information.

A 1. Is drug and alcohol testing of any aviation personnel required in that country, and, if so, for what categories of aviation personnel (e.g., pilots, flight attendants, maintenance personnel, flight dispatchers, others (please specify))?

A 2. Please provide an explanation of laws and regulations on other subjects, such as personal privacy or employment, which may affect the permissibility of drug and alcohol testing in the country, the circumstances under which such testing may be conducted, or the manner in which it may be conducted. Please include information on which categories of aviation personnel are subject to these requirements (e.g., pilots, flight attendants, maintenance personnel, flight dispatchers, others (please specify)). English language copies of the applicable laws and regulations would be greatly appreciated.

A 3. What types of testing are (a) permitted and (b) required under the laws and regulations of the country? Please address the following testing by type:

a. Pre-employment testing;

b. Random testing during employment;

c. Periodic testing during employment;

d. Testing based on a reasonable cause/suspicion that an employee is under the influence of alcohol or drugs while performing a safety-sensitive function or within a certain period of time before or after performing such a function;

e. Post-accident testing;

f. Return-to-duty and follow-up testing of individuals who have previously tested positive for alcohol or drugs;

g. Any other drug or alcohol testing (please specify)?

A 4. Should an FAA regulation include a provision to allow regulated parties to apply for a waiver[4] if any provision conflicts with a foreign law or regulation? Please state the rationale for

[3] For example, suitable laboratory facilities for analyzing specimens would need to be available.

[4] Based on the waiver provision in the Office of the Secretary of Transportation's non-discrimination on the basis of disability in air travel regulations described in 14 CFR § 382.9.

why such a waiver provision should or should not be included.

B. Program Elements of Acceptable Drug and Alcohol Testing

The FAA is considering addressing the program elements listed below in establishing the criteria for determining whether a drug and alcohol testing program is acceptable to the Administrator. Questions associated with each program element are listed below.

1. *A defined set of circumstances under which testing is conducted for alcohol and the most pervasive drugs of abuse in the relevant country.* Under the FAA's current domestic drug and alcohol testing regulations for persons performing flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatcher duties, aircraft maintenance and preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties testing is required in the following circumstances:

- Pre-employment (for drugs only);
- Randomly during employment;
- After an accident;
- If there is reasonable cause/suspicion to believe that an individual is under the influence of alcohol or drugs while performing safety-sensitive functions or within a certain period of time before or after performing such functions;
- Return-to-duty testing and follow-up testing before and after returning an employee to duty who previously tested positive for alcohol or drugs or refused to submit to testing.

B1. For a program to be found acceptable to the Administrator, should the FAA require that testing be conducted under all of the above circumstances for which it is required in the U.S.? If not, under what circumstances should testing be required?

2. *Types of substances tested.* 49 U.S.C. 44733(d)(2) requires that the proposed rule include ''alcohol and controlled substances testing''. The substances that are tested in the United States include alcohol, marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. The FAA recognizes that the drugs of concern in other countries may vary depending upon conditions in those countries. Therefore, the FAA poses the following questions:

B2a. Should an acceptable program require testing for, at a minimum, the drugs for which the FAA requires testing in the United States? If not, please provide information on which drugs should be tested for, at a minimum, to constitute an acceptable program.

B2b. At what concentrations should a test for alcohol, drugs, or their metabolites be considered positive? Should an acceptable program identify set ceiling concentrations above which tests must be considered positive? If so, what should those levels be?

3. *A mechanism that is an effective deterrent to drug and alcohol misuse.* The FAA views random testing as an effective deterrent because there is an element of surprise. Employees subject to random testing receive little notice before they must report for testing. Other countries or industry may have developed other effective methods of deterrence and some countries may prohibit or significantly restrict the use of random testing. The FAA poses the following questions with respect to this potential program element:

B3a. Does the country allow or require random drug and/or alcohol testing? If so, please describe the process.

B3b. If the country does not allow or require random drug and/or alcohol testing, are there laws to prohibit random testing?

B3c. If random testing is not allowed in a given country, what other methods could be used to successfully deter employees from misusing drugs or alcohol while performing safety-sensitive duties or within a certain period of time before performing such duties? How would such misuse be detected?

4. *Procedures that ensure the integrity, identity, and proper analysis of the collected specimen to ensure accuracy of the test result.* In the United States, the U.S. Department of Transportation has adopted a chain-of-custody process developed by the U.S. Department of Health and Human Services (HHS) to document the handling and storage of a specimen from the time it is collected until the time it is released to the testing facility. This process, coupled with the FAA's requirement that testing programs in the United States use a laboratory certified by HHS, helps ensure the accuracy of testing results. The FAA poses the following questions with respect to this potential program element:

B4a. What testing methods, if any, in addition to those currently permitted under part 120, should be permitted in programs outside the United States?

B4b. What standards should personnel and laboratories or other facilities in foreign countries be required to meet? Please address the following matters:

- Personnel qualifications;
- Measures to prevent adulteration, substitution, or mistaken identification of specimens;
- Measures to ensure drug and alcohol testing information is only released to authorized persons;
- Measures to determine whether there is a legitimate medical explanation for a positive test result;
- Other relevant considerations (please specify).

B4c. HHS-certified laboratories are not available outside the United States; therefore, should a program be acceptable if it allows the use of other laboratories that have been certified by DOT, another regulatory authority, or international organization as meeting equivalent or more stringent international standards?

5. *A means of ensuring that an employee who returns to work [after violating the law] is no longer misusing alcohol or drugs.* If an employee who violated the drug or alcohol regulations is permitted to return to work, it is important to have a means for ensuring that the employee is no longer misusing alcohol or drugs and a means of detecting such misuse if it recurs after the employee returns to safety-sensitive duties. The return-to-duty process in the United States is described in the Department of Transportation's regulations at 49 CFR part 40, subpart O. The FAA poses the following questions with respect to this potential program element:

B5a. What are the minimum standards that employees who have violated drug and alcohol regulations should meet before they return to performing safety-sensitive maintenance functions?

B5b. If follow-up testing is not permitted, what other methods would ensure that an employee who has previously tested positive for alcohol or drugs does not misuse them again after returning to safety-sensitive duties?

C. Existing Drug and Alcohol Testing Programs in Other Countries

The FAA recognizes that existing drug and alcohol testing programs in other countries may take various forms and must comply with the applicable laws and regulations of those countries. In some countries, drug and alcohol testing programs may be established by industry in accordance with regulations promulgated by a government agency, as is the case in the United States. In others, a government agency may administer a national drug and alcohol testing program. In yet others, industry participants may have voluntarily established drug and alcohol testing programs as a good business practice or for competitive advantage in the

marketplace without being required to do so. In addition to the information provided in part B above, the FAA requests the information described below about existing drug and alcohol testing programs in other countries, whether legally mandated or voluntarily established. The FAA is interested in both nationwide information for other countries and information pertaining to the testing programs of specific companies or the members of an association:

C 1. Which drugs are most pervasively misused in the country? Please provide data to support this answer.

C 2. Are testing programs in the country:

a. Administered by a national regulatory authority;

b. Required to be established by industry participants under that country's laws and regulations;

c. Voluntarily established by industry participants;

d. Other (please specify)?

C 3. Please describe the process that is followed after an employee's drug test is confirmed positive or alcohol concentration is confirmed to be above the permitted limit, including at what point an individual would be removed from safety-sensitive duty.

C 4. If the country allows drug or alcohol testing, what protections does the country's legal system provide for the employee?

C 5. What are the potential consequences in that country, including, but not limited to, enforcement action by the relevant government authority, when an individual who performs safety-sensitive aviation duties tests positive for alcohol or drugs?

D. Miscellaneous

D 1. Should the FAA include within the scope of a proposed rule all authorized persons performing safety-sensitive maintenance functions on aircraft operated by part 121 air carriers in accordance with 14 CFR 43.17 ? Please include the rationale for why such personnel should or should not be subject to testing in any comment.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

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

Congress mandated that the FAA propose a rule requiring that all employees of part 145 repair stations who perform safety-sensitive maintenance functions on part 121 air carriers' aircraft be subject to an alcohol and drug testing program that has been determined acceptable by the Administrator and is consistent with the applicable laws of the country in which the repair station is located. This mandate requires the FAA to propose drug and alcohol testing for employees of part 145 repair stations located outside the United States who perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers. The FAA understands that the implementation of such a regulation would impose costs on industry, the FAA, and perhaps other parties.

The FAA might also extend this testing requirement to include all authorized persons performing safety-sensitive maintenance functions on aircraft operated by part 121 air carriers in accordance with 14 CFR § 43.17. It is very difficult, however, for the FAA to reliably estimate such costs at this time, given the limited information about other countries' relevant laws and regulations, existing drug and alcohol testing programs in other countries, the actual and potential costs associated with conducting drug and alcohol testing in other countries (which is expected to vary), the cost of establishing testing programs in countries where they do not currently exist, and other relevant information. To help gauge the economic impact of a proposed rule, the FAA is requesting information from industry, as well as from the government of countries as described below. For all cost questions in this ''Regulatory Notices and Analyses'' section, please note who bears or would bear the costs (e.g., the employee; the air carrier for whom work is performed; the covered maintenance provider, a regulatory authority, other (please specify)) in any response provided.

In January 2006, the FAA issued a final rule entitled *Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities* (71 FR 1666). That rule amended the FAA's regulations governing drug and alcohol testing in the United States to clarify that each person who performs a safety-sensitive function for a regulated employer by contract, including by subcontract at any tier, is subject to testing. Consequently, the regulatory evaluation for that final rule (hereinafter referred to as the ''2005 Regulatory Evaluation''), which was published in Docket No.: FAA–2002–11301, addresses costs associated with drug and alcohol testing in the United States.

The FAA is providing information from the 2005 Regulatory Evaluation to provide the public with an understanding of the types and level of detail of information needed to accurately estimate the economic impact of a rule for drug and alcohol testing of employees of covered maintenance providers who perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers. The FAA understands that the costs associated with drug and alcohol testing are likely to be different outside the United States and may vary from country to country. The FAA also understands that the specific details of drug and alcohol testing programs likely vary from country to country; however, the FAA expects that, for any drug and alcohol testing program, there will be costs associated with the testing process, training and education, developing and maintaining a testing program, and keeping (and possibly submitting) any documentation that may be required by national regulatory authorities or as part of a voluntary program's policies. The FAA requests that commenters also provide information about any other costs that may be relevant. The FAA is interested in data at the national level, from the members of associations, and from specific companies' programs. There were a number of basic assumptions that the FAA made in the 2005 Regulatory Evaluation. The FAA assumed the following:

• Maintenance providers affected by that rule would develop and implement their own programs, instead of being covered under another company's program or using a service agent with already-established procedures.

• An additional 2.5% of maintenance workers would be subject to the antidrug and alcohol misuse prevention programs under that rule.

• The number of employees in the maintenance sector grows at 1.5% per year.

• There would be two supervisors per contractor and that the attrition rate for mechanics was approximately 10% per year.

The FAA requests comments on these assumptions.

The FAA also assumed the following values:

• Price of a drug test—$45;

• Price of an alcohol test—$34;

• Time for a drug test (hours)—0.75;

• Time for an alcohol test (hours)—0.75;

• One instructor for every 20 supervisors and/or employees to be trained

• Maintenance employee salary—$33.07/hour;

• Maintenance supervisor salary—$39.68/hour;

• Instructor—$36.37/hour;

• Clerical—$18.62/hour;

The FAA requests comments on these assumptions.

Testing Costs

All employees who are subject to drug and alcohol testing under FAA regulations in the United States are subject to the following types of tests: pre-employment (for drugs only), random, post-accident, reasonable cause/suspicion, return-to-duty, and follow-up. The 2005 Regulatory Evaluation considered the cost of testing to include the actual cost of the test, as well as the cost of the employee's time.

Please answer the following questions.

RE 1. For each year of the last 10 years, please provide the number of (a) drug and (b) alcohol tests conducted on aviation personnel who perform safety-sensitive functions and the number of positive tests, regardless of whether maintenance personnel are currently tested under the particular program described. If maintenance personnel are currently tested, please provide the number of (a) drug and (b) alcohol tests conducted on maintenance personnel that perform safety-sensitive functions and the number of positive tests for such personnel separately. For an example of the type of data that the FAA seeks, see the table below from the 2005 Regulatory Evaluation.

Alcohol-Related Testing Results (Maintenance Personnel)	1996	1997	1998	1999	2000	2001	2002	2003
NUMBER OF TESTS	33,743	37,739	16,240	23,892	24,696	24,683	22,447	20,560
NUMBER OF POSITIVE RESULTS OF VIOLATIONS	82	75	61	48	53	71	49	45
PERCENT OF TESTS INVOLVING VIOLATIONS	0.24%	0.20%	0.38%	0.20%	0.21%	0.29%	0.22%	0.22%
Drug-Related Testing Results (Maintenance Personnel)						2001	2002	2003
NUMBER OF TESTS						85,993	67,694	68,589
NUMBER OF POSITIVE RESULTS						1,148	824	871
PERCENT OF TESTS THAT WERE POSITIVE						1.33%	1.22%	1.27%

RE 2. What types of testing are required for (a) drugs and (b) alcohol (e.g., pre-employment, post-accident, reasonable cause/suspicion, random, return-to-duty, follow-up, other (please specify))?

RE 3. What types of personnel are subject to (a) drug and (b) alcohol testing in the relevant country, company, or among the members of the association (e.g., pilots, flight attendants, air traffic controllers, flight dispatchers, maintenance personnel, other (please specify))?

RE 4. Is drug and alcohol testing currently conducted in the relevant country? If not, how would a requirement to drug and alcohol test be met (i.e. travel to a different country, implement a testing program within the relevant country, or other (please specify))? If traveling to another country, what is the distance from the relevant country? How much time will be spent traveling?

RE 5. What is the cost of (a) the drug test and (b) the alcohol test per person? Do or would the costs differ for different categories of tests (i.e., pre-employment, post-accident, reasonable cause/suspicion, random, periodic, return-to-duty, follow-up, or other (please specify))? How long does it take for an employee to complete each of these tests? If screening tests for (a) drugs or (b) alcohol are or would be conducted, followed by confirmatory testing when the screening test is positive, what are or would be the costs associated with conducting (a) the screening test and (b) the confirmatory test?

RE 6. How many maintenance personnel in the relevant country or in a particular company or group of companies perform safety-sensitive maintenance functions? How many of them perform safety-sensitive maintenance functions on aircraft operated by part 121 air carriers (and are not directly employed by such air carriers)? How many are subject to drug and alcohol testing?

RE 7. How many new employees are hired to perform safety-sensitive maintenance functions per year? How many maintenance employees who perform safety-sensitive functions leave per year? The FAA will need to be able to estimate testing costs in future years. See the table below for an example from the 2005 Regulatory Evaluation.

2005 Regulatory Evaluation

Forecasted Testing Costs											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Maintenance Workers - Total	199,203	202,191	205,224	208,302	211,427	214,598	217,817	221,084	224,400	227,766	
Maintenance Workers - Affected by this rulemaking	4,980	5,055	5,131	5,208	5,286	5,365	5,445	5,527	5,610	5,694	
Alcohol Misuse Testing											
Pre-employment	18	19	19	19	19	20	20	20	21	21	196
Random	498	506	513	521	529	537	545	553	561	569	5,332
Post-Accident	2	3	3	3	3	3	3	3	3	3	29
Reasonable Cause	2	3	3	3	3	3	3	3	3	3	29
Return to Duty	2	2	2	2	2	2	2	2	2	2	20
Follow-Up - Current Year	12	12	12	12	12	13	13	13	13	13	125
Follow-Up - Next Year	0	12	12	12	12	12	13	13	13	13	112
Total Alcohol Tests	534	557	564	572	580	590	599	607	616	624	5,843
Drug Testing											
Pre-employment	4,980	933	947	961	975	990	1,004	1,020	1,035	1,050	13,895
Random	1,245	1,264	1,283	1,302	1,322	1,341	1,361	1,382	1,403	1,424	13,327
Post-Accident	5	5	5	5	5	5	5	5	5	5	50
Reasonable Cause	8	8	8	8	8	8	8	9	9	9	83
Return to Duty	8	8	9	9	9	9	9	9	9	10	89
Follow-Up - Current Year	41	42	42	43	44	44	45	46	46	47	440
Follow-Up - Next Year	0	33	33	34	34	35	35	36	37	37	314
Total Drug Tests	6,287	2,293	2,327	2,362	2,397	2,432	2,467	2,507	2,544	2,582	28,198
Cost of Alcohol Testing											
Total Tests	534	557	564	572	580	590	599	607	616	624	5,843
Cost of Test	$18,156	$18,938	$19,176	$19,448	$19,720	$20,060	$20,366	$20,638	$20,944	$21,216	$198,662
Cost of Employee's Time	$13,553	$14,137	$14,310	$14,509	$14,712	$14,961	$15,189	$15,387	$15,611	$15,814	$148,183
Total Cost	$31,709	$33,075	$33,486	$33,957	$34,432	$35,021	$35,555	$36,025	$36,555	$37,030	$346,845
Cost of Drug Testing											
Total Tests	6,287	2,293	2,327	2,362	2,397	2,432	2,467	2,507	2,544	2,582	28,198
Cost of Test	$282,915	$103,185	$104,715	$106,290	$107,865	$109,440	$111,015	$112,815	$114,480	$116,190	$1,268,910
Cost of Employee's Time	$159,564	$58,196	$59,042	$59,912	$60,800	$61,669	$62,557	$63,552	$64,471	$65,434	$715,197
Total Cost	$442,479	$161,381	$163,757	$166,202	$168,665	$171,109	$173,572	$176,367	$178,951	$181,624	$1,984,107

RE 7. What is or would be the annual cost per person of each category of staff required to conduct testing (collection personnel, laboratory personnel, other (please specify))?

Training and Education Costs

In the United States, for each drug and alcohol testing program, the employer must train employees and supervisors on the effects and consequences of drug use on personal health, safety, and work environment, as well as the manifestations and behavioral cues that may indicate drug use and abuse. The regulations do not specify the amount of time associated with this training; in the 2005 Regulatory Evaluation, the FAA assumed 30 minutes.

Under current regulations, supervisors who will make reasonable cause/suspicion determinations must receive at least 60 minutes for each program (for a total of 120 minutes). Supervisors must also receive recurrent training under the FAA's drug testing rules. The rules do not say when the recurrent training must occur or how long it must be; however, the FAA recommends recurrent training every 12 to 18 months and that it include an element on alcohol testing. For the 2005 Regulatory Evaluation, the FAA assumed that the recurrent training occurs every 12 months and takes 60 minutes.

Please answer the following questions.

RE 8. What are or would be the initial and recurrent training and education costs, on a per person basis? For:

a. Employees subject to testing,

b. Supervisors,

c. Persons authorized to determine whether there is reasonable cause/suspicion to believe that an employee may be under the influence of alcohol or drugs while performing, or within a certain amount of time before or after performing, a safety-sensitive function and that the employee should be tested on that basis,

d. Specimen collectors,

e. Persons responsible for analyzing specimens for alcohol, drugs, or their metabolites,

f. Persons involved in determining or recommending the appropriate course of treatment and/or education for an employee who has tested positive for drugs or alcohol,

g. Other personnel involved in the drug or alcohol testing program (please specify)?

RE 9. How many personnel in category (g) of question RE8 receive or would receive (1) initial and (2) recurrent training and/or education annually?

RE 10. What was or would be the cost of developing any necessary training program initially, including materials, and what is or would be the annual cost, including materials, of maintaining it? What types of training materials are or would be required?

RE 11. What are or would be the annual costs of the staff required to conduct training? How many staff would be required to conduct training?

RE 12. How often is/must/would recurrent training be conducted?

Program Development and Maintenance Costs

Under the rule for which the 2005 Regulatory Evaluation was conducted, it was assumed that each affected maintenance provider would have to devote resources to developing drug and alcohol testing programs. In addition, each affected maintenance provider would have to spend time to produce information required to either obtain an operations specification for its part 145 certificate or register its drug and alcohol program with the FAA. At the FAA, the submitted information would have to be processed and entered into the appropriate database.

In calculating program development costs in the 2005 Regulatory Evaluation, the FAA assumed 16 hours for start-up program development. The FAA estimated that, for affected maintenance providers that chose to register with the FAA, it would take each one 20 minutes at $21 per hour to gather the required information and submit it to the FAA. At the FAA, the submitted information has to be processed. In the 2005 Regulatory Evaluation, the FAA estimated that an administrative assistant, an FG–7 being paid at about $25.00 per hour, would enter this information into a database. The FAA assumed that administrative assistants would need 10 minutes to input the information.

Please answer the following questions.

RE 13. How much would it cost (besides training costs already addressed above or cost to do the actual testing) to develop a drug and alcohol testing program? What would be the annual program maintenance costs (besides training costs already addressed above)? What items are included in both of these types of costs?

RE 14. Is the drug and alcohol testing program regulated by an agency of a government? If so, how much time per year is required to prepare and maintain required documentation and submit information to the responsible regulatory authority? What information items must be submitted? How long does it take for the company to gather this information? How long does it take for the responsible regulatory authority to process the submission? Who at the responsible regulatory authority processes these submissions?

RE 15. How many submissions must be made per year?

RE 16. What are or would be the costs of staff required to evaluate employees who have tested positive for drugs or alcohol and to provide any needed education and/or treatment? What would the cost of treatment be, in terms of employees time and opportunity cost? How many such staff would be needed? What are or would be the other costs associated with any program of treatment and/or education?

RE 17. What are or would be the costs for a laboratory in the relevant country to obtain HHS, its equivalent, or more stringent certification, including both fees and the costs of any actions that would need to be taken to meet the applicable certification standards? Please specify the certification standards being used as a point of reference in any comments.

RE 18. Is shipping specimens to an existing HHS-certified or DOT approved laboratory a reasonable alternative? What would be the costs associated with packaging and shipping specimens to one of the existing HHS-certified laboratories for testing?

Annual Documentation Costs

The FAA's drug testing regulations require each company to document both the initial and recurrent training for supervisory personnel who make reasonable cause determinations. In the 2005 Regulatory Evaluation, the FAA assumed that the cost of this documentation is about $1.30 per record, which included record creation, filing, and storage. The same sort of documentation is needed for the supervisors who determine whether reasonable suspicion exists concerning probable alcohol misuse. The FAA assumed the cost of this documentation is also about $1.30 per record. The FAA's existing regulations require documentation of such things as:

- Training of employees in the requirements of the antidrug program;
- All reasonable cause/suspicion cases;
- If a post-accident alcohol test is not administered within 2 hours following the accident, the reasons the test was not promptly administered;
- If a post-accident alcohol test is not administered within 8 hours following the accident, the reasons the test was not promptly administered;
- Refusal to submit to a required drug or alcohol test (the company must also notify the FAA); and
- Medical Review Officer (MRO) reports of verified positive drug test results for employees holding airman medical certificates issued by the FAA under 14 CFR part 67. (Both the MRO and the company must also notify the FAA.)

Please answer the following questions.

RE 19. What are or would be the annual recordkeeping or other documentation costs associated with the drug and/or alcohol testing program?

RE 20. Who maintains or would maintain any required documentation (e.g., employer, government agency, other (please specify))?

RE 21. What documentation is or would be required to be maintained by and/or submitted to the responsible regulatory agency? How much time would be needed to prepare and/or submit the documentation?

RE 22. What is the format for recordkeeping?

Accident Prevention Benefits

The FAA indicated in the 2005 Regulatory Evaluation that it believed it was possible that illegal drug use or alcohol misuse by members of the aviation community may have contributed to additional accidents or incidents. The FAA acknowledged the fact that there had not been any aviation accidents directly attributed to a maintenance worker misusing or abusing drugs or alcohol.[5] However, as the table below shows, maintenance employees had among the highest positive rates on alcohol and drug tests among aviation-related employees, so the connection between illegal drug use and alcohol misuse and maintenance-related accidents certainly could exist. The FAA stated that it was important to note that not only are maintenance workers rarely tested after an accident (only 0.05% and 0.09% of maintenance workers are administered post-accident alcohol and drug tests, respectively), but it would be difficult to directly tie poor maintenance work, due to inappropriate drug use or alcohol misuse, to an accident that may occur weeks or months later, particularly with the widespread use of contract workers at many different tiers.

[5] That analysis was limited to maintenance workers because that was the population affected by that rulemaking.

	Percentage of Alcohol Violation Test (2001 – 2003)	Percentage of Positive Drug Test (2001-2003)
Flight Crew	0.11%	0.07%
Flight Attendants	0.39%	0.51%
Flight Instructors	0.08%	0.14%
Aircraft Dispatchers	0.21%	0.79%
Maintenance Personnel	0.24%	1.28%
Aviation Screeners	0.24%	2.09%
Ground Security Coordinators	0.22%	0.72%
Air Traffic Controllers	0.00%	0.52%
TOTAL	0.25%	0.99%

The 2005 Regulatory Evaluation indicated that, while there had been no documented aviation accidents in the United States in the time period analyzed that were directly attributed to misuse or abuse of drugs or alcohol by maintenance personnel, the FAA believed it was possible that such misuse or abuse may have contributed to aviation-related accidents. The FAA believed it was prudent to base the estimated benefits of the final rule on avoiding one part 135 accidents over the next 10 years, thus avoiding a total of 5 fatalities and a destroyed or damaged airplane. The FAA estimated the benefits of avoided fatalities at $15 million. This number of accidents, fatalities, and destroyed airplanes was less than 1% of all maintenance-related accidents that had occurred; the FAA considered these benefits to be reasonable. The total benefits in the 2005 regulatory evaluation were calculated by assuming an equally likely chance of avoiding these accidents in each of the next 10 years. Total benefits summed to $15.07 million ($10.59 million, discounted).

Please answer the following questions.

RE 22. What benefits has the relevant country/company seen from drug and alcohol testing?

RE 23. Are you aware of any accidents in which drug or alcohol misuse by safety-sensitive aviation personnel (e.g. pilots, flight attendants, maintenance personnel, air traffic controllers, flight dispatchers, other (please specify)) may have caused or contributed to the accident? Please describe the circumstances and identify the type of safety-sensitive personnel whose drug or alcohol misuse may have caused or contributed to the accident. Were there any fatalities, injuries, or damage to aircraft? If so, please describe. How many confirmed positive drug and alcohol tests occur annually in the country/company?

RE 24. Have industry participants experienced a savings in insurance premiums as a result of drug and alcohol testing?

B. International Compatibility

In keeping with the United States' obligations under the Chicago Convention, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that exactly correspond to the regulations being considered for proposal, as ICAO neither requires nor recommends that Member States implement testing of aviation personnel with safety-sensitive responsibilities for alcohol or drugs. As discussed in the Background section of this preamble, however, there are a number of ICAO standards and recommended practices that address the misuse of drugs and alcohol by such personnel and recognize the potential hazard that such substance misuse may pose to aviation safety.

C. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this ANPRM qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review and DOT Regulatory Policies and Procedures

The FAA is soliciting comments on the potential costs and benefits of the initiatives in the ANPRM. This ANPRM has been drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. This ANPRM has been reviewed by the Office of Management and Budget and is considered ''significant'' under the Department of Transportation's Regulatory Policies and Procedures.

B. Executive Order 13132, Federalism

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

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

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

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, or a

specific question posed by the FAA, and fully explain the rationale for any comment, include supporting data, if applicable. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. The FAA requests that all comments be submitted in English.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this ANPRM. Before acting on this ANPRM, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The Agency may change its potential proposals in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to any of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the Agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

Electronic copies of rulemaking documents may be obtained from the Internet by—

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

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

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

Issued in Washington, DC, under the authority set forth in 49 U.S.C. 44733 on: March 5, 2014.

James R. Fraser,

Federal Air Surgeon.

[FR Doc. 2014–05653 Filed 3–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2014–N–0108]

New Animal Drug Applications; Confidentiality of Data and Information in a New Animal Drug Application File

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is proposing to amend its regulation regarding the confidentiality of data and information in and about new animal drug application files to change when certain approval-related information would be disclosed by the Agency. This change would ensure that the Agency is able to update its list of approved new animal drug products within the statutory timeframe. It would also permit more timely public disclosure of approval-related information, increasing the transparency of FDA decision making in the approval of new animal drugs.

DATES: Submit either electronic or written comments by June 2, 2014. If FDA receives any significant adverse comments, the Agency will publish a document in the **Federal Register** withdrawing the direct final rule within 30 days after the comment period ends. FDA will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0108, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0108 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Scott Fontana, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 512(i) (21 U.S.C. 360b(i)) was added to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by the Animal Drug Amendments of 1968 (Pub. L. 90–399). Section 512(i) requires the conditions and indications of use of a new animal drug to be published in the **Federal Register** upon approval of a new animal drug application (NADA) filed under section 512(b) of the FD&C Act.

In 1974, FDA revised its regulations regarding the confidentiality of information in applications in § 135.33a (21 CFR 135.33a) to include provisions of the Freedom of Information Act (Pub. L. 89–487). That revision established that public disclosure by the Agency of certain data and information in an NADA file could not occur before the **Federal Register** notice of approval

published (39 FR 44653, December 24, 1974). Shortly thereafter, § 135.33a was redesignated as § 514.11 (21 CFR 514.11) (40 FR 13802 at 13825, March 27, 1975).

In 1988, the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) added section 512(n)(4)(A) of the FD&C Act, which states that the Agency shall publish a list of approved new animal drug products and revise that list every 30 days to include each new animal drug that has been approved during that 30-day period. This list, as well as related patent information and marketing exclusivity periods, is contained in a document generally known as the ''Green Book,'' available at the Agency's public Web site at *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts*.

The editorial and clearance processes for publishing the **Federal Register** notice announcing the approval of an NADA varies from 1 to 2 months after the approval letter is issued to the applicant. Consequently, the addition of newly approved product information to the ''Green Book'' and public disclosure of certain other approval-related information at the Agency's public Web site is delayed until after that **Federal Register** notice is published. Such other approval-related information may include the summary of information forming the basis for approval (known also as the Freedom of Information Summary) and documentation of environmental review. Trade and proprietary information in the application file remains confidential and is not disclosed.

FDA is proposing to amend § 514.11 to change the time when certain approval-related information in an NADA file would be publicly disclosed, from when notice of the approval is published in the **Federal Register** to when the application is approved. This change would ensure that the Agency is able to update the ''Green Book'' within the 30-day statutory timeframe (see section 512 (n)(4)(A)(ii) of the FD&C Act). It would also permit more timely public disclosure of certain approval-related information following sponsor notification of application approval, increasing the transparency of Agency decision making in the approval of new animal drugs.

II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA proposes to amend § 514.11 to change the time when certain approval-related information in an NADA file would be publicly disclosed to ensure that the Agency is able to update the ''Green Book'' within the 30-day statutory time frame. This proposed rule is intended to make noncontroversial changes to existing regulations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion direct final rule. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this proposed rule runs concurrently with the comment period of the companion direct final rule. Any comments received in response to the companion direct final rule will also be considered as comments regarding this proposed rule.

FDA is providing a comment period for the proposed rule of 75 days after the date of publication in the **Federal Register.** If FDA receives a significant adverse comment, we intend to withdraw the direct final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, the Agency will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the proposed rule will not be considered significant or adverse under this procedure. For example, a comment recommending a regulation change in addition to those in the proposed rule would not be considered a significant adverse comment unless the comment states why the proposed rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this proposed rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the proposed rule that are not the subject of a significant adverse comment.

If FDA does not receive significant adverse comment in response to the proposed rule, the Agency will publish a document in the **Federal Register** confirming the effective date of the final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register.**

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at: *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm*.

III. Legal Authority

FDA is issuing this proposed rule under section 512(c) of the FD&C Act. This section gives the Secretary of Health and Human Services the authority to approve new animal drug applications. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any

significant impact of a rule on small entities. Because this proposed rule would not impose any compliance costs on sponsors of animal drug products that are currently marketed or in development, the Agency proposes to certify that the proposed rule if finalized would not have a significant economic impact on a substantial number of small entities.

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

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. 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.*

List of Subjects in 21 CFR Part 514

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

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 514 be amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 356a, 360b, 371, 379e, 381.

■ 2. In § 514.11, revise paragraphs (b), (d), (e) introductory text, and (e)(2)(ii) introductory text to read as follows:

§ 514.11 Confidentiality of data and information in a new animal drug application file.

* * * * *

(b) The existence of an NADA file will not be disclosed by the Food and Drug Administration before the application has been approved, unless it has been previously disclosed or acknowledged.

* * * * *

(d) If the existence of an NADA file has been publicly disclosed or acknowledged before the application has been approved, no data or information contained in the file is available for public disclosure, but the Commissioner may, in his discretion, disclose a summary of such selected portions of the safety and effectiveness data as are appropriate for public consideration of a specific pending issue, i.e., at an open session of a Food and Drug Administration advisory committee or pursuant to an exchange of important regulatory information with a foreign government.

(e) After an application has been approved, the following data and information in the NADA file are immediately available for public disclosure unless extraordinary circumstances are shown:

* * * * *

(2) * * *

(ii) For an NADA approved after July 1, 1975, a summary of such data and information prepared in one of the following two alternative ways shall be publicly released when the application is approved.

* * * * *

Dated: March 7, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05432 Filed 3–14–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 62, and 70

[EPA–R07–OAR–2013–0724; FRL 9907–78-Region 7]

Approval and Promulgation of Implementation Plans, State Plans for Designated Facilities and Pollutants, and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP), the 40 CFR part 62 state plans for designated facilities and pollutants (111(d)), and the 40 CFR part 70 operating permits program, which were received on August 25, 2011, May 8, 2012, and February 11, 2013, respectively. The revisions submitted by the state move definitions currently in individual rules into one rule and eliminates the risk of the same term being defined differently for different rules. This action provides more clarity for the regulated public. These revisions do not have an adverse affect on air quality. EPA's proposed approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments on this proposed action must be received in writing by April 16, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0724, by mail to Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7028, or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 28, 2014.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2014–05684 Filed 3–14–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1152]

Proposed Flood Elevation Determinations for Washington County, Pennsylvania (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Washington County, Pennsylvania (All Jurisdictions).

DATES: The withdrawal is effective on March 17, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1152, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On November 2, 2010, FEMA published a proposed rulemaking at 75 FR 67308–67310, proposing flood elevation determinations along one or more flooding sources in Washington County, Pennsylvania. Because FEMA has or will be issuing a Revised Preliminary Flood Insurance Rate Map, and if necessary a Flood Insurance Study report, featuring updated flood hazard information, the proposed rulemaking is being withdrawn. A Notice of Proposed Flood Hazard Determinations will be published in the **Federal Register** and in the affected community's local newspaper.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05736 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1179]

Proposed Flood Elevation Determinations for Bennington County, Vermont (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Bennington County, Vermont (All Jurisdictions).

DATES: This withdrawal is effective on March 17, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1179, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On April 6, 2011, FEMA published a proposed rulemaking at 76 FR 19020–19021, proposing flood elevation determinations along one or more flooding sources in Bennington County, Vermont. Because FEMA has or will be issuing a Revised Preliminary Flood Insurance Rate Map, and if necessary a Flood Insurance Study report, featuring updated flood hazard information, the proposed rulemaking is being withdrawn. A Notice of Proposed Flood Hazard Determinations will be published in the **Federal Register** and in the affected community's local newspaper.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05738 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1311]

Proposed Flood Hazard Determinations for Brown County, Texas, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is

withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps, and where applicable, in the supporting Flood Insurance Study reports for Brown County, Texas, and Incorporated Areas.

DATES: This withdrawal is effective March 17, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1311, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On May 21, 2013, FEMA published a proposed notice at 78 FR 29770, proposing flood hazard determinations in Brown County, Texas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05739 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR parts 22, 24, 27, 87 and 90

[WT Docket No. 13–301; FCC 13–157; DA 14–327]

Expanding Access to Mobile Wireless Services Onboard Aircraft

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Communications Commission extends the deadline for filing reply comments on the Commission's *Notice of Proposed Rulemaking* (*NPRM*), in this proceeding, which was published in the **Federal Register** on Wednesday, January 15, 2014. Interested parties now will have until May 16, 2014, to file reply comments, as opposed to the March 17, 2014, deadline set forth in the *NPRM.*

DATES: The reply comment period for the proposed rule published January 15, 2014 (79 FR 2615), is extended. Submit reply comments on or before May 16, 2014.

ADDRESSES: You may submit comments, identified by WT Docket No. 13–301 or FCC 13–157, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/.* Follow the instructions for submitting comments.
- *Mail:* FCC Headquarters, 445 12th St. SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

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

FOR FURTHER INFORMATION CONTACT: Amanda Huetinck of the Mobility Division, Wireless Telecommunications Bureau, at (202) 418–7090 or *Amanda.Huetinck@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

By this document, we extend the deadline for filing reply comments in response to the *NPRM* in WT Docket No. 13–301 to allow parties to more thoroughly address the technical issues raised in the *NPRM* and in the record. Interested parties now will have until May 16, 2014, to file reply comments.

On February 28, 2014, AeroMobile Communications Limited (''AeroMobile'') and Panasonic Avionics Corporation (''Panasonic''), jointly, and CTIA—The Wireless Association (''CTIA'') filed requests to extend the reply comment deadline in response to the *NPRM* by 60 days, to May 16, 2014. The Joint Motion and the CTIA Request contend that this extension is warranted for parties to properly address the complicated technological, legal, and policy issues raised by the *NPRM* and the initial comments. The Joint Motion and the CTIA request also assert that the additional time will provide various stakeholders—including AeroMobile, Panasonic, and CTIA—ample opportunity to consult with each other on technical issues.

Specifically, the Joint Motion states that more time is necessary for consultations regarding ''the technical studies and authorization regime supporting in-flight mobile communications in Europe and

elsewhere.'' The Joint Motion also notes that an extension of time would ''enable interested parties to consider comments submitted in other proceedings, including the Department of Transportation Advance Notice of Proposed Rulemaking seeking comment on voice services onboard aircraft.''

The CTIA Request similarly states that an extension is needed so that parties can ''conduct much needed interference and other technological analyses, consider other existing studies beyond those discussed in the *NPRM,* and follow up on questions and issues sparked by commenters who discussed the inflight systems that have been deployed abroad.'' The CTIA Request also notes the large number of comments that have been filed in the docket, stating that ''[t]he Commission should strive to ensure that the record contains a meaningful opportunity to contribute input into this highly watched rulemaking.''

It is the general policy of the Commission that extensions of time shall not be routinely granted. However, under these circumstances, we agree that an extension of time to file reply comments is warranted to ensure that the Commission obtains a complete and thorough technical record in response to the *NPRM.* The *NPRM* specifically sought comment on technological solutions that may enable interference-free operation of wireless devices aboard airborne aircraft, and requested that commenters provide technical analysis in support of their comments. We conclude that a short extension of time is warranted to enable interested parties sufficient opportunity to review and respond to the complex technical issues raised by the *NPRM.* Accordingly, pursuant to § 4(i) of the Communications Act of 1934, as amended, and § 1.46 of the Commission's rules, we extend the deadline for filing reply comments until May 16, 2014.

Federal Communications Commission.

Roger Sherman,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2014–05913 Filed 3–13–14; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 131030919–4173–01]

RIN 0648–BD73

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Reporting Requirements; Unused Catch Carryover

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing two actions in this rulemaking: A requirement for daily Vessel Monitoring System (VMS) catch reporting for vessels declared to fish in the Eastern U.S./Canada Area; and the *de minimis* amount of unused fishing year (FY) 2013 sector annual catch entitlement (ACE) that may be carried over, beginning in FY 2014, without being subject to potential accountability measures. The revision to the reporting requirement is necessary to better ensure accurate and timely Eastern U.S./Canada Area catch reporting for quota monitoring purposes. The proposed *de minimis* carryover amount is necessary to complete the carryover process NMFS described for FY 2014 in conjunction with the May 2013 rulemaking for Framework Adjustment 50 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intended effect of these actions is to inform the public and solicit public comment on NMFS's proposed measures.

DATES: Comments must be received by April 16, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0179, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/# !docketDetail;D=NOAA-NMFS-2013-0179*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will general be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Framework 50 and its associated documents, including the environmental assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) prepared by the Council and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The previously listed documents are also accessible via the Internet at: *http://www.nero.noaa.gov/sfd/sfdmulti.html.*

FOR FURTHER INFORMATION CONTACT: For information on the Eastern U.S./Canada Area reporting requirements in this rule contact Liz Sullivan, Fishery Management Specialist, phone: 978–282–8493. For information on the unused ACE *de minimis* carryover amount, contact Mike Ruccio, Fishery Policy Analyst, phone: 978–281–9104.

SUPPLEMENTARY INFORMATION:

1. Background

Eastern U.S./Canada Area Daily VMS Reporting. Prior to FY 2013, the regulatory text for the catch monitoring/attribution program for Georges Bank (GB) cod and haddock required that all GB cod and haddock caught on a trip in which a vessel fished in both the Western and Eastern U.S./Canada Areas be attributed to the Eastern Area. In practice, we attributed catch of these stocks to areas fished based on our understanding that Amendment 16 to the FMP intended this result, and that the regulatory text was inadvertently left unchanged from pre-Amendment 16 measures.

In commenting on a proposed rule (78 FR 18188; March 25, 2013) that included a measure to correct this inadvertent language holdover, the New

England Fishery Management Council (Council) objected to the proposed revision, stating it was inconsistent with their intent in Amendment 16. Because the proposed change was meant to reflect Council intent regarding Amendment 16, we withdrew its proposed revision, leaving the original text in place in the final rule. We noted this change as an interim measure, but asked for comments as it varied from the proposed rule. We then received a second comment letter from the Council on the interim measure, retracting the first statement of intent, and supporting the approach we first proposed, as well as suggesting that the requirement for daily reporting of catches in the Eastern Area could be reinstituted as allowed under Amendment 16 through Regional Administrator authority.

Based on the second Council letter, we announced on July 10, 2013, that Eastern U.S./Canada Area catch monitoring was being changed from the interim method to a system that apportions catch based on area fished, consistent with the recommendation of the Council and the 2013 proposed rule measure. We published the final rule to finalize this monitoring method on August 29, 2013 (78 FR 53363). Accounting for all FY 2013 trips has been retroactively revised from the interim approach to the area fished method. Such changes were considered to be within the purview of the Regional Administrator (§ 648.85(a)(3)(ii)(A)).

The Amendment 16 final rule published on April 9, 2010 (75 FR 18262) intended to remove the requirement for sector vessels to submit daily VMS catch reports when declared into the U.S./Canada Management Area, as well as the two Eastern U.S./Canada Special Access Programs (SAPs; the Closed Area II Yellowtail Flounder/Haddock SAP and the Eastern U.S./Canada Haddock SAP), because the requirement for a weekly sector manager report was determined to be sufficient by the Regional Administrator. This was captured in the preamble of the proposed and final rules for Amendment 16; however, this change was not reflected in the regulatory text at § 648.85(a)(3)(v). As part of a rulemaking on August 29, 2013 (78 FR 53363), we announced our intention to revert to the original requirement for sector vessels declared to fish in the Eastern U.S./Canada Area to submit daily VMS catch reports. We did not, nor do not, intend to change this requirement for vessels declared only into the Western U.S./Canada Area. Because the daily reporting requirement is already specified in the regulations (§ 648.85(a)(3)(v)) for vessels declared into the Eastern U.S./Canada Area, this provision need not change, except to clarify that the daily reporting requirement does not apply to vessels declared only into the Western U.S./Canada Area. Accordingly, this action proposes to modify the reporting requirement of § 648.85(a)(3)(v) such that only sector vessels that have declared into the Eastern U.S./Canada Area would be required to submit daily catch reports. The proposal also will clarify that, for vessels declared only into the Western U.S./Canada Area, sectors must continue to submit weekly sector catch reports. The intent of this action is to improve the accuracy of reporting of the Eastern U.S./Canada Management Area.

De Minimis Unused Sector ACE Carryover. Sectors are permitted to carry forward up to 10 percent of unused ACE from one FY to the next for many groundfish stocks. The substantial reduction in catch levels from FY 2012 to FY 2013 made clear that the way carryover amounts had been accounted for in previous FYs could, in some situations, result in a potential catch (i.e., available fishery-level annual catch limit (ACL) plus 10-percent carryover from previous year sector sub-ACL) of some stocks that could exceed the established Acceptable Biological Catch (ABC), and possibly the Overfishing Limit (OFL).

To address this possibility, we issued, in conjunction with the rule implementing Framework Adjustment 50 for FY 2013, rulemaking under section 305(d) of the Magnuson-Stevens Act to clarify how accounting for year-to-year unused sector ACE carryover would be handled beginning in FY 2014 (78 FR 26172; May 3, 2013). The applicable regulations outlining the carryover system, including the revisions made in Framework Adjustment 50, can be found in § 648.87(b)(1)(i)(F)(*1*)–(*5*).

Our clarification specified that sectors would be held accountable for any overage of the sector-specific sub-ACL if the total fishery level ACL were exceeded in any given year, consistent with the existing accountability measures regulations. The clarification makes explicitly clear that sectors would be accountable for carried over-catch used if the total ACL is exceeded, except for a nominal *de minimis* amount to be determined by NMFS. We believe providing a nominal amount of carryover is an important safety consideration because, by allowing some carryover, vessels could elect to forego some portion of, or entire, late-season fishing trips for safety reasons, knowing that they could instead harvest the *de minimis* amount in the next fishing year, irrespective of any accountability measures. Prior to the clarification, it was unclear from Amendment 16 whether accountability measures should apply to carried-over catch. NMFS' clarification was designed to make the carryover program more consistent with the National Standard 1 guidelines (§ 600.310(a)). Substantial explanation of the carryover program accounting is provided in Framework 50 and the associated rulemaking documents and is not repeated here.

Given the need to complete other components of the Framework 50 rulemaking for timely implementation at the start of the FY 2013, NMFS was unable to fully develop and analyze an appropriate *de minimis* level in conjunction with the framework rulemaking. Instead, we established a process wherein we would conduct proposed rulemaking for an appropriate *de minimis* carryover level. This is that action.

2. Proposed Measures

Eastern U.S./Canada Area Daily VMS Reporting. We propose to require sector vessels declared to fish in the Eastern U.S./Canada Area to submit daily VMS catch reports. The reports would be submitted in 24-hour intervals for each day, and would be required to include at least the following information:

1. VTR serial number or other universal ID specified by the Regional Administrator;
2. Date fish were caught and statistical area in which the fish were caught; and
3. Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

The regulations at § 648.85(a)(3)(v) currently require sector vessels to submit daily reports if they declare in the Eastern U.S./Canada Area. As discussed in the Background above, the Amendment 16 final rule intended to remove the requirement for daily reporting, pursuant to the authority granted to the NMFS Regional Administrator by the FMP, as it was determined at that time that the weekly sector catch report was sufficient. However, this change was not reflected in the regulatory text, and so the current proposal to revert to the original requirement of daily reporting does not require a substantive change to the regulations for vessels declared into the Eastern U.S./Canada Management Area.

However, although the current regulatory text requires daily reporting for vessels declared only into the Western U.S./Canada Area, weekly sector catch reports have been determined to be sufficient, and therefore the regulatory text at § 648.85(a)(3)(v) will be modified to delete the daily reporting requirement for such vessels.

Pursuant to the regulations at § 648.10(k)(2), vessels who have declared their intent to fish within multiple Broad Stock Areas must submit a trip-level hail report via VMS. This report must include the landed weight of regulated species and total retained catch, unless the vessel is fishing in a special management program such as the Eastern U.S./Canada Area, and is required to submit daily reports via VMS. As proposed in this rule, by reverting to the daily reporting requirement, a sector vessel on a trip declared into the Eastern U.S./Canada Area and fishing in multiple Broad Stock Areas would be exempt from the requirement to submit a trip-level catch report.

De Minimis Unused Sector ACE Carryover. We propose to provide 1 percent of the annual sector sub-annual catch limit (sub-ACL) as the *de minimis* carryover amount, starting in FY 2014. This amount of carryover, if used, will not be specifically counted against the sector sub-ACL for accountability purposes. The full sub-ACL would still be allocated to sectors as ACE (i.e., not reduced by 1 percent). The existing carryover provision that allows up to 10 percent of unused sector ACE to be carried over remains in effect; however, any carried over catch in excess of the *de minimis* amount would be counted against the sub-ACL for accountability purposes if the total fishery-level ACL is exceeded.

By using a nominal amount of the sector-specific sub-ACL in the derivation process, the resulting 1-percent amount provided as the *de minimis* carryover falls within the management uncertainty buffer established for sectors. This approach better ensures that the *de minimis* value is in line with catch limits established for the FY in which carryover may be taken. For FY 2015 and beyond, we propose this approach of using 1 percent of the sector sub-ACL for the year in which carryover would be harvested would be the default *de minimis* amount. The actual value may vary year-to-year based on the sub-ACLs specified for the year. We propose to publish the actual *de minimis* amount in conjunction with either Council initiated frameworks implementing ACLs or in sector ACE adjustment rules.

As an example:

- If the FY 2014 sector sub-ACL for species X is 100 mt, the *de minimis* amount would be 1 mt.
- If the FY 2013 sector sub-ACL species X is 200 mt, up to 20 mt (10 percent of the FY 2013 sub-ACL) could be carried over from FY 2013 to 2014.
- Of this 20 mt, sectors would not be required to repay 1 mt (i.e., the *de minimis* amount) if the accountability repayment were triggered. Sectors would be required to repay up to 19 mt (i.e., the remaining carryover balance that is not considered *de minimis*) if the total ACL and sector sub-ACL were exceeded.

The 1-percent *de minimis* amount would ensure that overfishing will not occur, because the value would only be a minor portion of the Council's management uncertainty buffer that offsets the ABC and sub-ACLs. The Council has identified several unquantified management uncertainties as part of a 3 to 5-percent management uncertainty buffer. Currently, the Council uses a management uncertainty buffer of 5 percent for all but one stock. NMFS considers the 1-percent amount to be *de minimis* because, when it is combined with the full harvest of a corresponding stock-level ACL, it does not cause the fishery ABC to be exceeded. It would cause an ACL overage in this circumstance, but only if the full *de minimis* carryover amounts are harvested and all of the sector sub-ACL is harvested. Even in the unlikely event that this occurs, a 1-percent *de minimis* overage would still be well below the 3 to 5-percent management uncertainty buffer used by the Council when it determines the ACL. Because the 1-percent *de minimis* amount is a minor portion of the management uncertainty buffer, NMFS would not invoke the overage payback accountability measure.

The Council is still in the process of finalizing for recommendation to NMFS the FY 2014 ABCs and ACLs for many groundfish stocks. These values will likely be finalized in late spring 2014, for use in FY 2014, which begins May 1, 2014. If the *de minimis* approach outlined here is adopted, NMFS will publish final *de minimis* values in conjunction with rules for FY 2014. In the interim, the current FY 2014 ABC and ACL values either already put in place by Framework 50 or under discussion by the Council for inclusion in Framework 51 are provided in Table 1 to show the derivation of the potential *de minimis* value that would result.

TABLE 1—POTENTIAL FY 2014 CATCH LIMIT INFORMATION, *de minimis* CARRYOVER AMOUNTS, TOTAL POTENTIAL CATCH, AND IMPACT OF REALIZING TOTAL POTENTIAL CATCH. ALL WEIGHTS IN METRIC TONS

Stock or species	2014 Potential Catch Limit Information				*de minimus* amount and evaluation			
	FY 2014 OFL	FY 2014 ABC	FY 2014 Total ACL	FY 2014 Sector sub-ACL	*De Minimis* Value-1 Percent of Sector sub-ACL	Total potential catch (*de minimis* + total ACL)	Percent of Total ACL	Percent of ABC
Georges Bank (GB) Atlantic cod	3,570	2,506	1,867	1,776	18	1,885	101.0	75.2
Gulf of Maine (GOM) Atlantic cod	1,917	1,550	1,470	812	8	1,478	100.6	95.4
GB Haddock	46,268	35,699	18,312	17,116	171	18,483	100.9	51.8
GOM Haddock	440	341	323	218	2	325	100.7	95.4
S. New England (SNE) yellowtail flounder	1,042	700	665	469	5	670	100.7	95.7
Cape Cod/GOM yellowtail flounder	936	548	523	466	5	528	100.9	96.3
American Plaice	1,981	1,515	1,442	1,357	14	1,456	100.9	96.1
Witch Flounder	1,512	783	751	599	6	757	100.8	96.7
GB Winter Flounder	4,626	3,598	3,493	3,364	34	3,527	101.0	98.0
GOM Winter Flounder	1,458	1,078	1,040	688	7	1,047	100.7	97.1
SNE/Mid-Atlantic Winter Flounder	3,372	1,676	1,612	1,074	11	1,623	100.7	96.8
Acadian Redfish	16,130	11,465	10,909	10,523	105	11,014	101.0	96.1
White Hake	6,237	4,713	4,417	4,247	42	4,459	101.0	94.6
Pollock	20,554	16,000	15,304	13,131	131	15,435	100.9	96.5

All stocks are expected to continue use of a 5 percent uncertainty buffer between ABC and ACL in FY 2014 except for GB winter flounder (3 percent).

To assist the public in providing effective comment on the *de minimis* proposal, NMFS is asking the following questions:

1. Is the concept of a *de minimis* carryover amount clear? Is the process we intend to use to track and account for unused ACE carryover in FY 2014 clear, including when sectors may be subject to accountability measures if carried-over catch has been harvested? If not, what needs to be clarified in the final rule?

2. Is the *de minimis* amount an appropriate balance between making available some amount of carryover that may be used without payback implications and providing sufficient protection to stocks so that management uncertainty offsets are maintained and overfishing does not occur?

3. Are there alternate *de minimis* values or derivation approaches NMFS should consider?

In responding to these questions we remind the public that full-scale revision of the Amendment 16 carryover program would require a further Council-initiated action.

We considered higher amounts as the *de minimis* level (e.g., 2 percent or more of the sector sub-ACL), but were concerned that a higher amount could raise the likelihood that ACLs could be exceeded. Further, a higher amount would constitute a significant portion of the management uncertainty buffer and would potentially degrade its ability to prevent overfishing. To maintain the protection of this buffer, additional carryover catch above the *de minimis* amount would be subject to the overage payback accountability measure. Sectors could continue to use up to the full 10 percent available as carryover, but its use would be subject to accountability measures if the fishery level ACL is exceeded.

Corrections

NMFS proposes to modify the text at § 648.14(k)(11)(iv) to clarify the reporting requirements by removing the word ''landings'' from the paragraph.

NMFS proposes to modify the text at § 648.85(a)(3)(v) in order to clarify that the authority granted to the NMFS Regional Administrator to remove the daily reporting requirements for special management programs is separate and distinct from the regulatory requirement. This modification would move the language explaining the Regional Administrator's authority to a new subsection (§ 648.85(a)(3)(v)(B)) with a further clarification that the Regional Administrator's authority also includes modification of reporting requirements.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures in this proposed rule are consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Pursuant to the procedures established to implement section 6 of Executive Order (E.O.) 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

This proposed rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule contains two actions: A requirement for daily VMS catch reporting for vessels declared to fish in the Eastern U.S./Canada Area; and the *de minimis* amount of unused FY 2013 sector ACE that may be carried over beginning in FY 2014 without being subject to potential accountability measures. The revision to the reporting requirement is necessary to better ensure accurate and timely Eastern U.S./Canada Area catch reporting for quota monitoring purposes. The proposed *de minimis* carryover amount is necessary to complete the carryover process NMFS described for FY 2014 in conjunction with the May 2013 rulemaking for Framework Adjustment 50 to the NE Multispecies FMP.

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider disproportionality and profitability to determine the significance of regulatory impacts. There are no disproportionate impacts as a result of the two actions being proposed. Analyses being prepared for an upcoming multispecies action indicate 822 unique entities in the fishery, 806 of which are considered small business entities under Small Business Administration criteria and 16 that are considered large entities. These 16 large entities have ownership interest in finfish businesses, but obtain the majority of their gross sales from shellfish-related businesses. All businesses obtaining the majority of their gross sales from finfish are considered small businesses.

The change in VMS reporting frequency for vessels participating in the Eastern U.S./Canada Area will require catch data to be transmitted to NMFS once daily. Vessels participating in the overarching multispecies fishery already have onboard VMS units and submit various types of reports and declarations to participate in the fishery. The proposed change in reporting frequency implements the daily report structure contemplated in conjunction with Amendment 16 to the FMP. Previous analysis for Paperwork Reduction Act (PRA) collection Office of Management and Budged Control No. 0648–0202 estimated the cost of daily reporting as up to $1.00 per day. Vessels that have not previously submitted daily reports or that have not participated in the area will now be required to report more frequently, thereby increasing VMS operating costs. The reporting requirement would be imposed on all vessels choosing to fish in the area; fishing in the mandatory reporting area is voluntary. Moreover, as noted below, the charge is small enough and affects all vessels equally. Therefore, this rule will not result in disproportionate impacts on small entities.

In FY 2012, 62 sector vessels fished in the Eastern Area, taking a total of 398 sector trips, with an assumed length of 4 fishing days, based on the assumed trip length information used in the PRA analysis. The expected cost of sending a daily report on a per vessel basis is approximately $25.68 annually and $4.00 per trip. This cost is not expected to affect profitability for either small or large entities. Information compiled for FY 2011 in the final report on the performance of the NE multispecies fishery published by the Northeast Fisheries Science Center indicates the lowest nominal revenue from groundfish-specific landings was $730 per trip (vessels category of < 30 feet (9.1m) in length overall). Thus, the cost of daily reporting will be less than 0.5 percent of the lowest average nominal revenue in the fishery. Given that larger vessels or entities whose business involves multiple vessels of varying sizes would realize even lower potential operating cost, the impacts from daily reporting relative to nominal revenue are miniscule. Vessels may also land non-groundfish species in conjunction with fishing effort in the area, further reducing the potential impact of daily reporting costs on nominal revenue. Based on this, NMFS asserts the profitability criterion is not met.

Similarly, the *de minimis* carryover amount does not have disproportionate impacts on small entities. Adequate revenue information is available to

NMFS to ascertain the impact of *de minimis* carryover on regulated entities.

Prior rulemaking for Amendment 16 allowed sectors to carry over up to 10 percent of their overall allocation if, for any reason, they were unable to utilize that allocation in one FY. This allowance is designed to allow flexibility so that vessels do not fish during unsafe conditions to utilize their last units of catch allocations. The ability to carry over allocation is simultaneously constrained by a fishery-wide ACL that cannot be exceeded. Prior rulemaking created a provision for a *de minimis* carryover amount in excess of the ACL. This proposed rule establishes that amount at 1 percent of the upcoming FY ACL. The additional allocation, in excess of the ACL, will allow sectors and sector-enrolled entities to increase their gross sales slightly relative to being restricted to the ACL level, creating positive economic impacts for those enrolled in sectors. These benefits are not disproportionate, as the *de minimis* carryover amount is available to all sector-enrolled fishery participants.

For these reasons, the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 11, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, revise paragraph (k)(11)(iv) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(11) * * *

(iv) *Reporting requirements for all persons.* (A) If fishing under a NE multispecies DAS or on a sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report in accordance with § 648.85(a)(3)(v).

* * * * *

■ 3. In § 648.85, revise paragraph (a)(3)(v) to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(v) *Reporting.* (A) The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The owner or operator of a sector vessel must submit daily reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into the Eastern U.S./Canada Area. Vessels subject to the daily reporting requirement must report daily for the entire fishing trip, regardless of what areas are fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(*1*) VTR serial number or other universal ID specified by the Regional Administrator;

(*2*) Date fish were caught and statistical area in which fish were caught; and

(*3*) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

(B) The Regional Administrator may remove or modify the reporting requirement for sector vessels in § 648.85(a)(3)(v) in a manner consistent with the Administrative Procedure Act.

* * * * *

[FR Doc. 2014–05819 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 131115971–4214–01]

RIN 0648–XC995

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2014 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: We propose to approve 19 sector operations plans and contracts for fishing year (FY) 2014, provide Northeast (NE) multispecies annual catch entitlements (ACE) to these sectors, and grant regulatory exemptions. We request comment on the proposed sector operations plans and contracts; the environmental assessment (EA) analyzing the impacts of the operations plans; and our proposal to grant 20 of the 28 regulatory exemptions requested by the sectors. Approval of sector operations plans is necessary to allocate ACE to the sectors and for the sectors to operate. The NE Multispecies Fishery Management Plan (FMP) allows limited access permit holders to form sectors, and requires sectors to submit their operations plans and contracts to us, NMFS, for approval or disapproval. Approved sectors are exempt from certain effort control regulations and receive allocation of NE multispecies (groundfish) based on its members' fishing history.

This rule also announces the target at-sea monitoring (ASM) coverage rate for sector trips for FY 2014.

DATES: Written comments must be received on or before April 1, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0001, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0001*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Brett Alger, 55 Great Republic Drive, Gloucester, MA 01930.

• *Fax:* 978–281–9135; Attn: Brett Alger.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, phone (978) 675–2153, fax (978) 281–9135. To review **Federal Register** documents referenced in this rule, you can visit *http://www.nero.noaa.gov/sfd/sfdmultifr.html.*

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocations of a total allowable catch (TAC) for specific NE multispecies species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors). FW 48 to the FMP (78 FR 26118) eliminated dockside monitoring requirements, revised ASM requirements, removed the prohibition on requesting an exemption to allow access in year-round groundfish closures, and modified minimum fish sizes for NE multispecies stocks.

The FMP defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.'' Sectors are self-selecting, meaning each sector can choose its members.

The NE multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as ACE. These allocations are a portion of a stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based on the collective fishing history of a sector's members. Currently, sectors may receive allocations of most large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout. A sector determines how to harvest its ACEs and may decide to consolidate operations to fewer vessels.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several ''universal'' exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; the Georges Bank (GB) Seasonal Closure Area; NE multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; portions of the Gulf of Maine (GOM) Rolling Closure Areas; and the ASM coverage rate for sector vessels fishing on a monkfish DAS in the Southern New England (SNE) Broad Stock Area (BSA) with extra-large mesh gillnets. The FMP prohibits sectors from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements.

We received operations plans and preliminary contracts for FY 2014 from 19 sectors. The operations plans are similar to previously approved versions, but include additional exemption requests and proposals for industry-funded ASM plans. Five sectors did not submit operations plans or contracts. Four of these sectors now operate as state-operated permit banks as described below.

We have made a preliminary determination that the proposed 19 sector operations plans and contracts, and 20 of the 28 regulatory exemptions, are consistent with the FMP's goals and objectives, and meet sector requirements outlined in the regulations at § 648.87. We summarize many of the sector requirements in this proposed rule and request comments on the proposed operations plans, the accompanying EA, and our proposal to grant 20 of the 28 regulatory exemptions requested by the sectors, but deny the rest. Copies of the operations plans and contracts, and the EA, are available at *http://www.regulations.gov* and from NMFS (see **ADDRESSES**). Two of the 19 sectors, Northeast Fishery Sector IV and Sustainable Harvest Sector 3, propose to operate as private lease-only sectors. Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity and may transfer permits to active vessels.

The five sectors that chose not to submit operations plans and contracts for FY 2014 are the Tri-State Sector, and four state-operated permit bank sectors as follows: The State of Maine Permit Bank Sector, the State of New Hampshire Permit Bank Sector, the Commonwealth of Massachusetts Permit Bank Sector, and the State of Rhode Island Permit Bank Sector. Amendment 17 to the FMP allows a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942, March 23, 2012). These permit banks are required to submit a list of participating permits to us by a date specified in the permit bank's Memorandum of Agreement, typically April 1.

Sector Allocations

Sectors typically submit membership information to us on December 1 prior to the start of the FY, which begins each year on May 1. Due to uncertainty regarding ACLs for several stocks in FY 2014 and a corresponding delay in distributing a letter describing each vessel's potential contribution to a sector's quota for FY 2013, we extended the deadline to join a sector until March 6, 2014. Based on sector enrollment trends from the past 4 FYs, we expect sector participation in FY 2014 will be similar. Thus, we are using FY 2013 rosters as a proxy for FY 2014 sector membership and calculating the FY 2014 projected allocations in this proposed rule. In addition to the membership delay, all permits that change ownership after December 1, 2013, retain the ability to join a sector through April 30, 2014. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2014, to withdraw from a sector and fish in the common pool for FY 2014. We will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2014.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock, as shown in Table 1. The

information presented in Table 1 is the total percentage of each commercial sub-ACL each sector would receive for FY 2014, based on their FY 2013 rosters. Tables 2 and 3 show the allocations each sector would be allocated for FY 2014, based on their FY 2013 rosters. At the start of the FY after sector enrollment is finalized, we provide the final allocations, to the nearest pound, to the individual sectors, and we use those final allocations to monitor sector catch. While the common pool does not receive a specific allocation, the common pool sub-ACLs have been included in each of these tables for comparison.

We do not assign an individual permit separate PSCs for the Eastern GB cod or Eastern GB haddock; instead, we assign a permit a PSC for the GB cod stock and GB haddock stock. Each sector's GB cod and GB haddock allocations are then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and GB haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and Eastern GB haddock ACEs in the Eastern U.S./Canada Area.

At the start of FY 2014, we will withhold 20 percent of each sector's FY 2014 allocation until we finalize FY 2013 catch information. Further, we will allow sectors to transfer ACE for the first 2 weeks of the FY to reduce or eliminate any overages. If necessary, we will reduce any sector's FY 2014 allocation to account for a remaining overage in FY 2013. We will notify the New England Fishery Management Council (Council) and sector managers of this deadline in writing and will announce this decision on our Web site at *http://www.nero.noaa.gov/.*

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Table 1. Cumulative PSC (percentage) each sector would receive by stock for FY 2014.*

Sector Name	GB Cod†	GOM Cod	GB Haddock†	GOM Haddock	GB YT Flounder	SNE/MA YT Flounder‡	CC/GOM YT Flounder‡	American Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder‡	Redfish	White Hake	Pollock
GB Cod Fixed Gear Sector (Fixed Gear Sector)	27.71872988	2.427525124	5.763571581	1.836337195	0.012388586	0.306098122	2.754502235	0.907139553	2.100445949	0.027575466	3.733774761	1.649699057	2.738256567	5.682093562	7.373269077
Maine Coast Community Sector (MCCS)	0.210884903	4.596597061	0.039432654	2.55161868	0.003520766	0.666708601	1.051286855	7.556632938	5.060557394	0.006820574	1.962255738	0.193992022	2.501303594	4.395849418	3.797140053
Maine Permit Bank	0.133607478	1.149239515	0.04435478	1.119954871	0.013784972	0.0321106	0.317847866	1.164627556	0.726911262	0.000217924	0.424996136	0.018062606	0.82161897	1.652464617	1.687408962
Northeast Coastal Communities Sector (NCCS)	0.171714629	0.747118934	0.121288456	0.346947317	0.839360178	0.730299467	0.609611048	0.148400495	0.217164483	0.06851228	0.902725619	0.299690235	0.430799572	0.786899895	0.422108665
Northeast Fishery Sector (NEFS) 2	6.191171555	18.39148356	11.93561803	16.56937652	1.956212251	1.515977918	19.36890642	8.101995368	12.9838275	3.298503411	18.47190632	3.715706341	16.03891814	6.324580446	12.18480616
NEFS 3	1.254432578	14.38675335	0.145728022	9.639335615	0.009835375	0.359064276	8.54698643	4.060663072	2.850033098	0.026629309	9.319435141	0.770534716	1.340249434	4.728255234	6.742288564
NEFS 4	4.1367992	9.606087828	5.316410627	8.352659156	2.162140207	2.284433093	5.468195833	9.293451723	8.494753001	0.694261609	6.237485326	0.873984619	6.6411228	8.056725927	6.139347299
NEFS 5	0.787355997	0.012750377	1.054382599	0.29000082	1.612395162	23.14079398	0.483648066	0.494901351	0.66764438	0.519493466	0.067775875	12.40324636	0.076867166	0.120751931	0.105091422
NEFS 6	2.862851792	2.915090555	2.922120852	3.83168745	2.700718731	5.202188198	3.561907715	3.878483192	5.173945604	1.456372348	4.368261163	1.899063341	5.309470425	3.910609037	3.291675388
NEFS 7	5.211056055	0.392009572	4.954500464	0.470587008	11.29568227	4.600328498	2.855687041	3.591806195	3.29228748	14.85658589	0.834854477	6.361203285	0.585656695	0.825305761	0.72492652
NEFS 8	6.14880838	0.491350249	5.6707432	0.214415849	10.90431227	5.882487094	6.398437227	1.651042895	2.545436319	14.62910109	3.347594135	10.10393804	0.535076052	0.502817177	0.59723616
NEFS 9	14.24440858	1.734938904	11.60522774	4.79506944	26.78684937	8.010746054	10.41323599	8.274094588	8.276853188	39.50573969	2.434938053	18.66550659	5.831194068	4.153222567	4.226596885
NEFS 10	0.728661762	5.258247759	0.251374404	2.536025184	0.017009857	0.551161076	12.82168877	1.775528001	2.426063683	0.014020349	26.97367178	0.75334052	0.548197298	0.911865489	1.392122624
NEFS 11	0.391253409	11.16859205	0.03543876	2.348918505	0.000791476	0.017423136	2.103506392	1.352037708	1.466540747	0.000891972	1.933117315	0.018133592	0.925719327	2.337376129	6.476223062
NEFS 12	0.015440918	2.424989379	0.002634982	0.859334418	0.000755014	0.00226534	0.482526093	0.749010838	0.607519321	0.002502852	0.315960829	0.003606272	1.059331479	2.496406429	2.959391344
NEFS 13	7.959727663	0.948142154	16.08322713	0.988253483	24.97057352	19.05225135	5.028985804	5.162564913	6.265622578	7.459181845	2.339943913	11.06413673	3.980614019	1.739333215	2.270102215
New Hampshire Permit Bank	0.002124802	1.13716238	0.000259638	0.031122397	2.05874E-05	2.03879E-05	0.021799587	0.028491335	0.006159923	5.97789E-06	0.060253594	7.91351E-05	0.019395668	0.081269819	0.110849628
Sustainable Harvest Sector 1	19.69965286	19.4957918	33.08647612	42.18318787	13.19401946	8.294765742	12.83797012	39.30951304	34.27430747	16.31727077	10.26926712	18.50496543	50.01722164	50.42133195	38.71559296
Sustainable Harvest Sector 3	0.441448259	0.516942212	0.64380095	0.184787537	2.33217197	3.153847443	2.080616152	0.747017528	0.818211498	0.492229489	2.307418768	1.669226791	0.202850943	0.16200976	0.082302846
Sectors Total	**98.31013069**	**97.80081276**	**99.676591**	**99.14961931**	**98.81254203**	**83.80297037**	**97.20734564**	**98.24740229**	**98.25428488**	**99.3759163**	**96.30563606**	**88.96811568**	**99.60386385**	**99.28916836**	**99.29847984**
Common Pool	1.689869308	2.199187236	0.323409001	0.850380687	1.187457966	16.19702963	2.792654364	1.752597713	1.74571512	0.624083699	3.694363937	11.03188432	0.396136145	0.710831637	0.701520161

* The data in this table are based on FY 2013 sector rosters. NEFS I and the GB Cod Hook Sector did not operate in FY 2013, therefore, do not appear in this table.

† For FY 2014, 8.37 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 58.27 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 2. Proposed ACE (in 1,000 lbs), by stock, for each sector for FY 2014.*#^†

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB YT Flounder	SNE/MA YT Flounder	CC/GOM YT Flounder	American Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish Estimated	White Hake	Pollock
Fixed Gear Sector	90	991	44	1,271	911	9	0	4	29	28	28	2	59	44	638	536	2,150
MCCS	1	8	84	9	6	12	0	8	11	230	68	1	31	5	583	415	1,107
Maine Permit Bank	0	5	21	10	7	5	0	0	3	35	10	0	7	0	191	156	492
NCCS	1	6	14	27	19	2	5	9	6	5	3	5	14	8	100	74	123
NEFS 2	20	221	337	2,632	1,886	80	11	19	205	247	175	246	291	99	3,736	596	3,552
NEFS 3	4	45	263	32	23	47	0	4	90	124	38	2	147	21	312	446	1,966
NEFS 4	13	148	176	1,173	840	41	12	28	58	283	114	52	98	23	1,547	760	1,790
NEFS 5	3	28	0	233	167	1	9	288	5	15	9	39	1	331	18	11	31
NEFS 6	9	102	53	644	462	19	15	65	38	118	70	109	69	51	1,237	369	960
NEFS 7	17	186	7	1,093	783	2	63	57	30	109	44	1,109	13	170	136	78	211
NEFS 8	20	220	9	1,251	896	1	61	73	68	50	34	1,092	53	270	125	47	174
NEFS 9	46	509	32	2,560	1,834	23	150	100	110	252	111	2,948	38	498	1,358	392	1,232
NEFS 10	2	26	96	55	40	12	0	7	135	54	33	1	425	20	128	86	406
NEFS 11	1	14	204	8	6	11	0	0	22	41	20	0	30	0	216	220	1,888
NEFS 12	0	1	44	1	0	4	0	0	5	23	8	0	5	0	247	235	863
NEFS 13	26	284	17	3,547	2,541	5	140	237	53	157	84	557	37	295	927	164	662
New Hampshire Permit Bank	0	0	21	0	0	0	0	0	0	1	0	0	1	0	5	8	32
Sustainable Harvest Sector 1	64	704	357	7,297	5,228	205	74	103	136	1,198	461	1,218	162	494	11,650	4,755	11,287
Sustainable Harvest Sector 3	1	16	9	142	102	1	13	39	22	23	11	37	36	45	47	15	24
Sectors Total	**321**	**3,513**	**1,790**	**21,984**	**15,749**	**481**	**554**	**1,042**	**1,027**	**2,993**	**1,321**	**7,416**	**1,517**	**2,373**	**23,200**	**9,364**	**28,949**
Common Pool	6	60	40	71	51	4	7	201	29	53	23	47	58	294	92	67	205

*The data in this table are based on FY 2013 sector rosters. NEFS I and the GB Cod Hook Sector did not operate in FY 2013, therefore, do not appear in this table.

#Numbers are rounded to the nearest thousand lbs. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs to estimate each sector's ACE.

Table 3. Proposed ACE (in metric tons), by stock, for each sector for FY 2014.*#^†

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB YT Flounder	SNE/MA YT Flounder	CC/GOM YT Flounder	American Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish Estimated	White Hake	Pollock
Fixed Gear Sector	41	449	20	577	413	4	0	2	13	13	13	1	27	20	289	243	975
MCCS	0	3	38	4	3	6	0	4	5	104	31	0	14	2	264	188	502
Maine Permit Bank	0	2	10	4	3	2	0	0	2	16	4	0	3	0	87	71	223
NCCS	0	3	6	12	9	1	2	4	3	2	1	2	6	4	46	34	56
NEFS 2	9	100	153	1,194	855	36	5	9	93	112	79	112	132	45	1,695	271	1,611
NEFS 3	2	20	119	15	10	21	0	2	41	56	17	1	67	9	142	202	892
NEFS 4	6	67	80	532	381	18	6	13	26	128	52	24	45	11	702	345	812
NEFS 5	1	13	0	105	76	1	4	131	2	7	4	18	0	150	8	5	14
NEFS 6	4	46	24	292	209	8	7	29	17	54	32	49	31	23	561	167	435
NEFS 7	8	84	3	496	355	1	29	26	14	50	20	503	6	77	62	35	96
NEFS 8	9	100	4	567	406	0	28	33	31	23	16	495	24	122	57	22	79
NEFS 9	21	231	14	1,161	832	11	68	45	50	114	50	1,337	17	226	616	178	559
NEFS 10	1	12	44	25	18	6	0	3	61	25	15	0	193	9	58	39	184
NEFS 11	1	6	93	4	3	5	0	0	10	19	9	0	14	0	98	100	856
NEFS 12	0	0	20	0	0	2	0	0	2	10	4	0	2	0	112	107	391
NEFS 13	12	129	8	1,609	1,153	2	64	107	24	71	38	252	17	134	421	74	300
New Hampshire Permit Bank	0	0	9	0	0	0	0	0	0	0	0	0	0	0	2	3	15
Sustainable Harvest Sector 1	29	319	162	3,310	2,371	93	34	47	61	543	209	552	73	224	5,284	2,157	5,120
Sustainable Harvest Sector 3	1	7	4	64	46	0	6	18	10	10	5	17	16	20	21	7	11
Sectors Total	**145**	**1,594**	**812**	**9,972**	**7,144**	**218**	**251**	**473**	**466**	**1,358**	**599**	**3,364**	**688**	**1,077**	**10,523**	**4,248**	**13,131**
Common Pool	3	27	18	32	23	2	3	91	13	24	11	21	26	133	42	30	93

*The data in this table are based on FY 2013 sector rosters. NEFS I and the GB Cod Hook Sector did not operate in FY 2013, therefore, do not appear in this table.

#Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs to estimate each sector's ACE.

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Sector Operations Plans and Contracts

We received 19 sector operations plans and contracts by the September 3, 2013, deadline. Seventeen sectors operated in FY 2013, and two additional sectors, Northeast Fishery Sector I and the GB Cod Hook Sector, that did not operate last year, have submitted plans for FY 2014. In order to approve a sector's operations plan for FY 2014, that sector must have been compliant with reporting requirements from all previous years, including the year-end reporting requirements found at § 648.87(vi)(C). Submitted operations plans, provided on our Web site as a single document for each sector, not only contain the rules under which each sector would fish, but also provide the legal contract that binds each member to the sector for the length of the sector's operations plan, which currently is a single FY. Each sector's operations plan, and sector members, must comply with the regulations governing sectors, found at § 648.87. In addition, each sector must conduct fishing activities as detailed in its approved operations plan.

Any permit holder with a limited access NE multispecies permit that was valid as of May 1, 2008, is eligible to participate in a sector, including an inactive permit currently held in confirmation of permit history. If a permit holder officially enrolls a permit in a sector and the FY begins, then that permit must remain in the sector for the entire FY, and cannot fish in the NE multispecies fishery outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted in the letter of authorization (LOA) issued by the Regional Administrator, which details any approved exemptions from regulations. If, during a FY, a sector requests an exemption that we have already approved, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any amendments require modifications to LOAs, we would include these changes in updated LOAs and provide these to the appropriate sector members.

Each sector is required to ensure that it does not exceed its ACE during the FY. Sector vessels are required to retain all legal-sized allocated NE multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated NE multispecies stocks by a sector's vessels count against the sector's allocation. Catch from a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery or with exempted gear) targeting dogfish, monkfish, skate, and lobster (with non-trap gear) would be deducted from the sector's ACE because these trips use gear capable of catching groundfish. Catch from a trip in an exempted fishery does not count against a sector's allocation because the catch is assigned to a separate ACL sub-component.

For FYs 2010 and 2011, there was no requirement for an industry-funded ASM program and NMFS was able to fund an ASM program with a target ASM coverage rate of 30 percent of all trips. In addition, we provided 8-percent observer coverage through the Northeast Fishery Observer Program (NEFOP), which helps to support the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments. This resulted in an overall target coverage rate of 38 percent, between ASM and NEFOP, for FYs 2010 and 2011. For FY 2012, we conducted an analysis to determine the total coverage that would be necessary to achieve the same level of precision as attained by the 38-percent total coverage target used for FY's 2010 and 2011, and ultimately set a target coverage rate of 25 percent for FY 2012, which was 17 percent ASM, and 8 percent NEFOP. For FY 2013, we conducted the same analysis, and set a target coverage rate of 22 percent for FY 2013, which was 14 percent ASM, and 8 percent NEFOP. Since the beginning of FY 2012, industry was required to pay for ASM coverage, while we continued to fund NEFOP. However, we were able to fund both ASM and NEFOP in FY 2012 and 2013. As announced on February 21, 2014, NMFS will cover the ASM costs for groundfish sectors to meet the requirements under the NE Multispecies FMP in FY 2014, as well.

Amendment 16 regulations require NMFS to specify a level of ASM coverage that is sufficient to at least meet the same coefficient of variation (CV) specified in the SBRM and also to accurately monitor sector operations. FW 48 clarified what level of ASM coverage was expected to meet these goals. Regarding meeting the SBRM CV level, FW 48 determined that it should be made at the overall stock level, which is consistent with the level NMFS determined was necessary in FY 2013. FW 48 also amended the goals of the sector monitoring program to include achieving an accuracy level sufficient to minimize effects of potential monitoring bias.

Taking the provisions of FW 48 into account, and interpreting the ASM monitoring provision in the context of Magnuson-Stevens Act requirements and National Standards, we have determined that the appropriate level of ASM coverage should be set at the level that meets the CV requirement specified in the SBRM and minimizes the cost burden to sectors and NMFS to the extent practicable, while still providing a reliable estimate of overall catch by sectors needed for monitoring ACEs and ACLs. Based on this standard, NMFS has determined that the appropriate target coverage rate for FY 2014 is 26 percent. Using both NEFOP and ASM, we expect to cover 26 percent of all sector trips, with the exception of trips using a few specific exemptions, as described later in this rule. Discards derived from these observed and monitored trips will be used to calculate discards for unobserved sector trips. We have published a more detailed summary of the supporting information, explanation and justification for this decision at: *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2014_Multispecies_Sector_ASM_Requirements_Summary.pdf.*

This summary, in addition to providing sectors and the public with a full and transparent explanation of the appropriate level of ASM coverage of sector operations, complies with a settlement agreement entered into by NMFS and Oceana, Inc. The settlement agreement resolved a lawsuit brought by Oceana challenging the approval of the 2012 sector operations plans primarily on grounds that the agency failed to adequately justify and explain that the ASM coverage rate specified for FY 2012 would accurately monitor the catch to effectively enforce catch limits in the groundfish fishery.

The draft operations plans submitted in September 2013 included industry-funded ASM plans for FY 2014. However, because NMFS will be funding and operating ASM for sectors in FY 2014, we are not proposing to approve these ASM plans and would remove them from the final sector operations plans.

Sectors are required to monitor their allocations and catch, and submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all fishing operations in that stock area until it acquires more ACE, unless that sector has an approved plan to fish without ACE for that stock. ACE may be

transferred between sectors, but transfers to or from common pool vessels is prohibited. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties for sector plan violations, and provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract. A sector and sector members can be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector operations plan submitted for FY 2014 states that the sector would withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract details the method for initial ACE sub-allocation to sector members. For FY 2014, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector.

Requested FY 2014 Exemptions

Sectors requested 28 exemptions from the NE multispecies regulations through their FY 2014 operations plans. We evaluate each exemption to determine whether it allows for effective administration of and compliance with the operations plan and sector allocation, and that it is consistent with the goals and objectives of the FMP. Twenty of the 28 requests are grouped into several categories in this rule, as follows: Sixteen exemptions that were previously approved and are proposed for approval for FY 2014; one exemption previously approved for which we have concern; one exemption that was previously denied, but we are reconsidering based on a modified request for FY 2014; exemption requests related to accessing year-round groundfish mortality closures; and a new exemption request we propose to approve for FY 2014. The remaining eight exemption requests, each of which are proposed for denial, are grouped into two categories: Two requested exemptions that we propose to deny because they were previously rejected and no new information was provided; and six requested exemptions that we propose to deny because they are prohibited.

A discussion of all 28 exemption requests appears below; we request public comment on the proposed sector operations plans and our proposal to grant 20 requested exemptions and deny 8 requested exemptions, as well as the EA prepared for this action.

Exemptions We Propose To Approve (16)

In FY 2013, we exempted sectors from the following requirements, all of which have been requested for FY 2014: (1) 120-day block out of the fishery required for Day gillnet vessels, (2) 20-day spawning block out of the fishery required for all vessels, (3) prohibition on a vessel hauling another vessel's gillnet gear, (4) limits on the number of gillnets that may be hauled on GB when fishing under a NE multispecies/monkfish DAS, (5) limits on the number of hooks that may be fished, (6) DAS Leasing Program length and horsepower restrictions, (7) prohibition on discarding, (8) daily catch reporting by sector managers for sector vessels participating in the Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP), (9) powering vessel monitoring systems (VMS) while at the dock, (10) prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip, (11) prohibition on a vessel hauling another vessel's hook gear, (12) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock, (13) gear requirements in the Eastern U.S./Canada Management Area, (14) seasonal restrictions for the Eastern U.S./Canada Haddock SAP, (15) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP, and (16) sampling exemption. A detailed description of the previously approved exemptions and rationale for their approval can be found in the applicable final rules identified in Table 4 below:

TABLE 4—EXEMPTIONS FROM PREVIOUS FYS PROPOSED FOR APPROVAL IN FY 2014

Exemptions	Rulemaking	Date	Citation
1–9, 13	FY 2011—Sector Operations Final Rule	April 25, 2011	76 FR 23076.
10–12	FY 2012—Sector Operations Final Rule	May 2, 2012	77 FR 26129.
14–16	FY 2013—Sector Operations Interim Final Rule	May 2, 2013	78 FR 25591.

NE Multispecies FR documents can be found at *http://www.nero.noaa.gov/sfd/sfdmultifr.html*.

Exemption of Concern That We Previously Approved (1)

(17) Limits on the Number of Gillnets on Day Gillnet Vessels

The FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA) to prevent an uncontrolled increase in the number of nets being fished, thus undermining applicable DAS effort controls. The limits are specific to the type of gillnet within each RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). We previously approved this exemption in FYs 2010, 2011, and 2012 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. Sectors argued that the gillnet limits were designed to control fishing effort and are no longer necessary because a sector's ACE limits overall fishing mortality.

Previous effort analysis of all sector vessels using gillnet gear indicated an increase in gear used in the RMA with no corresponding increase in catch efficiency, which could lead to an increase in interactions with protected species. While a sector's ACE is designed to limit a stock's fishing mortality, fishing effort may affect other species. This increased effort could ultimately lead to a rise in interactions with protected species.

For FY 2013, we received several comments in support of the continued approval of the exemption without any restrictions, noting negative financial impacts if the exemption were not approved and that efforts were made to

increase pinger compliance to mitigate concerns for harbor porpoise. We recognize that pinger compliance is generally increasing in recent years; however, the increase is not seen across all sectors, nor across all gillnet vessels outside of the groundfish fishery. Correspondingly, while recent indications reflect a decrease in harbor porpoise takes, takes have not decreased to a suitable level. We also heard from several commenters who raised concerns for cod, impacts to non-target species, and the risk for lost gear. Based on the comments received and the concern for protected species and spawning cod, we restricted the use of this exemption to seasons with minimal cod spawning in the GOM, i.e., late spring. Therefore, a vessel fishing in the GOM RMA was able to use this exemption seasonally, but was restricted to the 100-net gillnet limit in blocks 124 and 125 in May, and in blocks 132 and 133 in June. A vessel fishing in GB RMA, SNE RMA, MA RMA, and the GOM outside of these times and areas did not have this additional restriction. We are proposing this exemption with the same GOM seasonal restrictions that we approved in FY 2013, and we request comment on approving this exemption again for FY 2014.

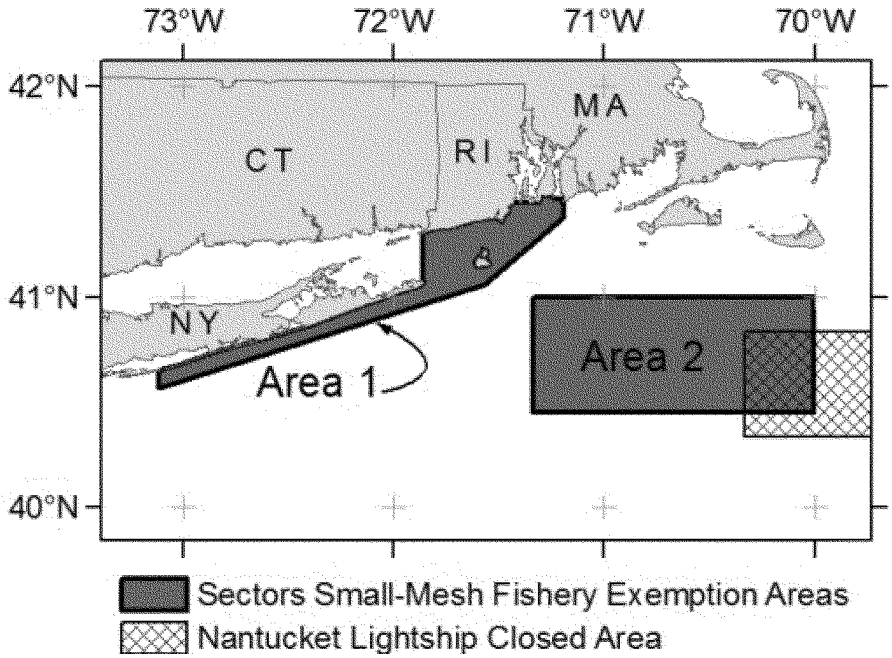
Previously Disapproved Exemption Under Consideration for Approval (1)

(18) Prohibition on Combining Small Mesh Exempted Fishery and Sector Trips

We received an exemption request in FY 2013 to allow sector vessels to fish in small-mesh exempted fisheries (e.g., whiting, squid) and in the large-mesh groundfish fishery on the same trip. A full description of the request and relevant regulations is in the FY 2013 Sector Proposed Rule (78 FR 16220, see page 16230, March 14, 2013). In the proposed rule, we raised several concerns about the exemption, including the ability to monitor these trips, the impacts that the exemption could have on juvenile fish, and the enforceability of using multiple mesh sizes on the same trip (i.e., participating in multiple directed fisheries on a single trip). We received comments in support and against the exemption request. Ultimately, it was disapproved in the FY 2013 Sector Interim Final Rule (78 FR 25591, May 2, 2013) for many of the concerns stated above.

For FY 2014, sectors have requested a similar exemption that would allow vessels to possess and use small-mesh and large-mesh trawl gear on a single trip, within portions of the SNE RMA. To address some of the concerns from FY 2013, sectors proposed that vessels using this exemption to fish with smaller mesh would fish in two discrete areas that have been shown to have minimal amounts of regulated species and ocean pout. The coordinates and maps for these two areas are show below:

Figure 1 – Sectors Small-Mesh Exemption Areas 1 and 2



Sector Small-Mesh Fishery Exemption Area 1 is bounded by the following coordinates connected in the order listed by straight lines, except where otherwise noted:

Point	N. latitude	W. longitude	Note
A	40°39.2′	73°07.0′	.....
B	40°34.0′	73°07.0′	.....
C	41°03.5′	71°34.0′	.....
D	41°23.0′	71°11.5′	.....
E	41°27.6′	71°11.5′	(1)
F	41°18.3′	71°51.5′	.....
G	41°04.3′	71°51.5′	(2)
A	40°39.2′	73°07.0′	.....

(1) From POINT E to POINT F along the southernmost coastline of Rhode Island and crossing all bays and inlets following the COLREGS Demarcation Lines defined in 33 CFR part 80.

(2) From POINT G back to POINT A along the southernmost coastline of Long Island, NY and crossing all bays and inlets following the COLREGS Demarcation Lines defined in 33 CFR part 80.

Sector Small-Mesh Fishery Exemption Area 2 is bound by the following coordinates connected in the order listed by straight lines:

Point	N. latitude	W. longitude
H	41°00.0′ N	71°20.0′ W.
I	41°00.0′ N	70°00.0′ W.
J	40°27.0′ N	70°00.0′ W.
K	40°27.0′ N	71°20.0′ W.
H	41°00.0′ N	71°20.0′ W.

Second, sectors proposed that one of the following trawl gear modifications would be required for use when using small mesh: Drop chain sweep with a minimum of 12 inches (30.48 cm) in length; a large mesh belly panel with a minimum of 32-inch (81.28-cm) mesh size; or an excluder grate secured forward of the codend with an outlet hole forward of the grate with bar spacing of no more than 1.97 inches (5.00 cm) wide. These gear modifications, when fished properly, have been shown to reduce the catch of legal and sub-legal groundfish stocks. Requiring these modifications is intended to also reduce the incentive for a sector vessel to target groundfish with small mesh.

Sectors have requested subjecting a vessel using this exemption to the same NEFOP and ASM coverage as standard groundfish trips (i.e., a total of 26 percent in FY 2014). The vessel would be required to declare their intent to use small mesh to target non-regulated species by submitting a Trip Start Hail through its VMS unit prior to departure; this would be used for monitoring and enforcement purposes. Trips declaring this exemption must stow their small-mesh gear and use their large-mesh gear first, and once finished with the large mesh, would have to submit a Multispecies Catch Report via VMS with all catch on board at that time. Once the Catch Report was sent, the vessel could then deploy small mesh with the required modifications in the specific areas (see map above), outside of the Nantucket Lightship CA, at which point, the large mesh could not be redeployed. Any legal-sized allocated groundfish stocks caught during these small-mesh hauls must be landed and the associated landed weight (dealer or vessel trip report (VTR)) would be deducted from the sector's ACE.

Vessels using this exemption would have their trips assessed using a new discard strata (i.e., area fished and gear type) and would be treated separately from sector trips that do not declare this exemption. After 1 year, an analysis would be conducted to determine whether large-mesh hauls on these trips should remain as a separate stratum or be part of an existing stratum. Vessels using this exemption would be required to retain all legal-sized groundfish when using small mesh, and all groundfish catch would be counted against a sector's ACE.

Recognizing that this year's modified request addressed some of our past concerns, we worked with the sectors to better understand the new request and their attempt to develop additional solutions to the issues we raised in the past. However, we remain concerned about the exemption, as proposed, regarding impacts on the resource, as well as monitoring and enforcing the exemption.

First, we are concerned about vessels potentially catching groundfish in these requested exemption areas with small-mesh nets. While the requested exemption areas do appear to have minimal amounts of groundfish, they are not completely void of these stocks. In fact, beginning in FY 2014, accountability measures (AMs) for the groundfish fishery will be implemented adjacent to the requested exemption areas to address high discards of windowpane flounder. This exemption provides an opportunity for vessels to target or incidentally catch allocated NE multispecies in these requested exemption areas while fishing with small-mesh nets.

We are also concerned about the possible increase in bycatch of juvenile fish. There is a change in selectivity from a 6.5-inch (16.5-cm) codend to a 2.5-inch (6.35-cm) codend, and a vessel using a small-mesh net may increase the catch of juvenile groundfish. The increased amount of bycatch may not affect an individual sector because the sector may have adequate ACE to cover the discards. However, because discards in the commercial groundfish fishery are calculated and monitored by weight, and not by number of fish, the smaller-mesh net could result in more fish by number that are discarded when fishing with the much smaller codend. An increased discard of juvenile fish may adversely affect groundfish stocks.

The three gear modifications proposed for this exemption could mitigate catch of regulated species when properly installed. All three modifications have been demonstrated to reduce the catch of regulated species, but none have been shown to completely eliminate it. While the modifications have the potential to harvest regulated species, such as cod, especially if the gears are not fished properly, the excluder grate modification may reduce catch of larger groundfish, but may still capture juveniles, even when fished properly.

Second, there are several concerns with monitoring this exemption. Small-mesh exempted fishery trips outside of this proposed exemption are only subject to the NEFOP monitoring requirements and do not receive ASM coverage. As a result, the vast majority of NEFOP observers and ASMs do not receive the training necessary for observing small-mesh fisheries. Because of this lack of training, we are concerned about accurately observing both the large-mesh and small-mesh portions of these proposed trips. Additionally, while this exemption is proposed to have a target coverage of 26 percent (NEFOP and ASM combined), this exemption would be treated separately from standard sector trips to accurately monitor species caught and discarded by area and gear type. As such, we are concerned about the effects of this exemption on the administration of our monitoring programs. For example, having to process data from these unique trips and distribute ASMs across more trips, could cause inefficiencies and affect our abilities to meet the target coverage of 26 percent that is required for overall sector monitoring. This specific concern is not unique to this exemption, and is raised again later in this rule for other exemptions.

Another monitoring concern is our ability to monitor fish caught in non-groundfish fisheries and whether the proposed changes in our accounting for this catch in these fisheries is required. Vessels fishing with small-mesh nets outside of the groundfish fishery, such as squid vessels, are required to discard all groundfish, legal and sub-legal. Because of this incidental groundfish catch in non-groundfish fisheries, a portion of the ACL of most groundfish stocks is reserved under the ''other sub-component'' category to account for the bycatch. This portion of the ACL is not an allocation in the other sub-component category, and there are currently no AMs for the non-groundfish fisheries in this sub-component category. Instead, if groundfish bycatch in the other sub-component category contributes to an overage of the groundfish ACL, the commercial groundfish fishery is held accountable for 100 percent of the overage. We monitor the amount of groundfish bycatch caught in non-groundfish fisheries through annual catch estimates, and the Council uses this information to determine if the amount of bycatch warrants allocating a sub-ACL and corresponding AMs to a specific non-groundfish fishery.

Allowing vessels using this exemption to discard legal-sized groundfish would significantly compromise both the ability to ensure that vessels are not retaining legal-sized groundfish from the small-mesh portion

of the trip, and prevent vessels from discarding groundfish caught from the large-mesh portion of the trip, while squid fishing. To address these enforcement concerns, this proposal requires vessels to land all legal-sized groundfish, bycatch that would normally count against the other sub-component would now count against the groundfish sub-ACL. This change in practice and accounting could hinder our ability to monitor the level of groundfish bycatch in non-groundfish fisheries, particularly the small-mesh fisheries. The frequency that this exemption is used, the magnitude of groundfish bycatch on these trips, and whether the bycatch includes a large portion of the non-allocated stocks (e.g., windowpane flounder) could adversely affect our ability to determine whether bycatch is increasing or poses any management concerns. This would also then potentially adversely affect the Council's determination of whether the amount of bycatch warrants allocating a sub-ACL and corresponding AMs to a non-groundfish fishery.

Lastly, there are enforcement concerns about the landings and discards of groundfish while the vessel uses small mesh on a sector trip under this exemption. At present, vessels are primarily bound by one minimum mesh size throughout their trip to target a single fishery, e.g., vessels use a 6.5-inch (16.5-cm) mesh codend to target groundfish on a sector trip. In order to use multiple mesh sizes on a trip to target other fisheries, vessels must declare out of the groundfish fishery, and for example, use a 5.5-inch (13.97-cm) mesh codend to target fluke, or a 2.5-inch (6.35-cm) mesh codend to target squid. Under the proposed exemption, a vessel would participate in multiple targeted fisheries, using multiple mesh sizes on the same fishing trip, which creates additional complexity of being able to associate the catch on board the vessel with the correct mesh size that was used. After a vessel has retained groundfish on board caught using large mesh, the vessel could use small mesh to target groundfish prior to entering one of the exemption areas, which would be illegal and difficult to detect. Under a typical small-mesh trip, a vessel is not allowed to be in possession of any regulated species at any time.

If approved, we will closely monitor the catch from these exempted trips. If it is determined that this exemption is having a negative impact on groundfish stocks, we would retain the authority to revoke this exemption during the FY.

Exemption Requests Related to Accessing Groundfish Closed Areas (1)

(19) Prohibition on Groundfish Trips in Year-Round Closed Areas

In FY 2013, we disapproved an exemption that would have allowed sector vessels restricted access to portions of CAs I and II, provided each trip carried an industry-funded ASM. For a detailed description of the exemption request and justifications for disapproval, see the final rule (78 FR 41772, December 16, 2013). When we proposed allowing sector access to these areas, we announced that we did not have funding to pay for monitoring the additional trips for exemptions requiring a 100-percent coverage level. Industry members indicated that it was too expensive to participate in the exemption, given the requirement to pay for a monitor on every trip. This, in combination with extensive comment opposing access to these areas to protect depleted stocks and our concern about the impacts on depleted stocks such as GB cod and GB yellowtail flounder, resulted in disapproval.

In FY 2014, we remain unable to fund monitoring costs for exemptions requiring a 100-percent coverage level. In addition, we have some concerns about funding and administering the shore-side portion of any monitoring program for an exemption that requires additional ASM, such as the exemption to access CAs I and II. For example, an increase in monitored trips would result in an increased need for data processing for those trips, which could cause delays that adversely affect our existing programs. Also, distributing ASMs across CA trips or other exemption's trips could affect our ability to meet the target coverage of 26 percent required for overall sector monitoring because an exemption requiring additional coverage places additional strain on the existing pool of ASM. If we are unable to fund the shore-side portion of an industry-funded ASM program, or if we determine that there are significant effects on data or ASM availability, approval of this exemption would be in jeopardy.

As discussed in the FY 2013 interim final rule allowing access to the Nantucket Lightship CA for sectors rule (78 FR 41772, December 16, 2013), we are interested in conducting research through an exempted fishing permit(s) (EFP) to gather catch data from CAs I and II. Results from any EFPs conducted in these areas could better inform the industry, the public, and NMFS, regarding the economic efficacy of accessing these CAs, while providing information specific to bycatch of depleted stocks.

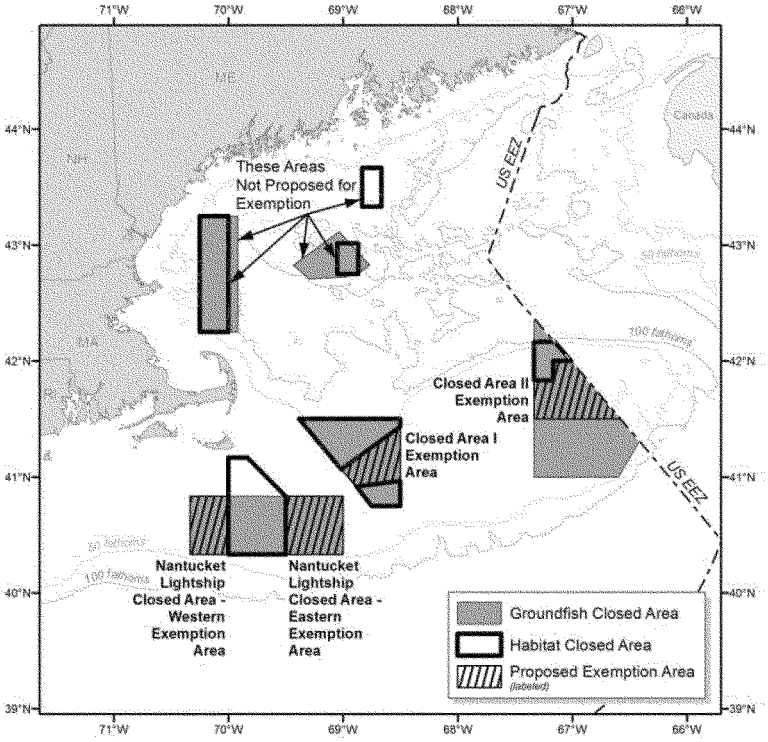
The Greater Atlantic Regional Fisheries Office and the Northeast Fisheries Science Center (NEFSC) are currently working to develop ideas for a short-term EFP that would allow a small number of groundfish trips into CAs I and II. These trips would attempt to address the following questions: (1) Could enough fish be caught to adequately offset the industry's additional expense of having an ASM on board, and (2) could catch of groundfish stocks of concern be addressed?

Industry has claimed that requiring 100-percent industry-funded ASM coverage when fishing in a CA makes the exemption economically unfeasible. Because there have been no commercial groundfish trips in these areas for close to two decades, industry is hesitant to make these initial assessment trips at their expense. Allowing a small number of trips into CAs I and II through an EFP could provide enough catch data to help the fishing industry determine whether trips into the area with an industry-funded monitor could be profitable. These ''test'' trips would provide recent and reliable catch information from CAs I and II, including catch rates of both abundant and depleted stocks. This information could help industry determine whether the cost of an ASM could be offset by increased landings of a stock with relatively high abundance (e.g., GB haddock), while avoiding stocks that are limiting to them. Although there have been studies in the past that examine catch rates of selective trawl gear, these studies have not been conducted inside the CAs being proposed for access.

While we continue to consider ways to develop an EFP proposal that is focused on access into CAs I and II, industry is also free to develop an EFP proposal to address any number of questions associated with fishing in a CA as well. EFP requests would be expeditiously reviewed and authorized, when merited. Permits would not be approved if the exempted activities could undermine measures that were established to conserve and manage fisheries or reduce interactions with protected species. Contingent on the results of any EFPs associated with this exemption that we have available during FY 2014, assuming that we could fund and administer the shore-side portion of a monitoring program, and there is sufficient ASM available, we are proposing to allow sectors access to CAs I and II in precisely the same manner that was proposed for FY 2013 (see 78 FR 41772, July 11, 2013). Given the

extra time it would take to implement an EFP and consider the results, the decision to approve an exemption allowing access to CA I and II would be done in a separate rulemaking sometime during FY 2014. This would be separate from a final rule addressing all other sector exemption requests in this proposed rule, including the request to access the Nantucket Lightship CA. A brief summary of the proposed action and rationale for granting sector exemptions allowing access to CAs I and II, and the Nantucket Lightship CA is below.

Figure 2 – Closed Areas Proposed for Opening through Sector Exemptions



Closed Area I Exemption Area

The waters in a portion of CA I, defined by straight lines connecting the following points in the order stated here:

Point	N. lat.	W. long.
A	41°04′	69°01′
B	41°26′	68°30′
C	40°58′	68°30′
D	40°55′	68°53′
A	41°04′	69°01′

Closed Area II Exemption Area

The waters in a portion of CA II, defined by straight lines connecting the following points in the order stated stated here:

Point	N. lat.	W. long.	Note
A	41°30′	(66°34.8′)	(1)
B	41°30′	67°20′	.....
C	41°50′	67°20′	.....
D	41°50′	67°10′	.....
E	42°00′	67°10′	.....
F	42°00′	(67°00.63′)	(2), (3)
A	41°30′	(66°34.8′)	(1)

[1] The intersection of 41°30′ N. latitude and the U.S.-Canada Maritime Boundary, approximate longitude in parentheses.

[2] The intersection of 42°00′ N. latitude and the U.S.-Canada Maritime Boundary, approximate longitude in parentheses.

[3] From POINT F back to POINT A along the U.S.-Canada Maritime Boundary.

Nantucket Lightship Closed Area—Western Exemption Area

The waters in the western portion of the Nantucket Lightship CA, defined by straight lines connecting the following points in the order stated here:

Point	N. lat.	W. long.
A	40°50′	70°20′
B	40°50′	70°00′
C	40°20′	70°00′
D	40°20′	70°20′
A	40°50′	70°20′

Nantucket Lightship Closed Area—Eastern Exemption Area

The waters in the eastern portion of the Nantucket Lightship CA, defined by straight lines connecting the following points in the order stated here:

Point	N. lat.	W. long.
A	40°50′	69°30′
B	40°50′	69°00′
C	40°20′	69°00′
D	40°20′	69°30′
A	40°50′	69°30′

1. Closed Area I Exemption Area

If this proposed exemption is approved without any changes in response to any EFP results during FY 2014, the central portion of CA I would be opened seasonally to selective gear from the date the final rule approving this exemption is published, through December 31, 2014. Trawl vessels would be restricted to selective trawl gear, including the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action.

Hook gear would be permitted in this area, as well. Because GB cod is overfished and subject to overfishing, and gillnets cannot selectively capture haddock without catching cod, vessels would be prohibited from fishing with gillnets in this area. Flounder nets would be prohibited in this area to help protect GB yellowtail flounder, which is also overfished and subject to overfishing.

Allowing vessels into the CA I Exemption Area would increase their opportunities to target healthy stocks of GB haddock. Although the Council specified in FW 48 that vessels could fish in the area until February 15, we are proposing to prohibit vessels from fishing in the CA I Exemption Area after December 31 due to impacts on GB cod spawning. Since the closure of this area in 1994, GB haddock has rebounded and is a healthy stock. On the other hand, GB cod and GB yellowtail flounder are overfished and subject to overfishing. This proposed action would allow fishing for GB haddock and other healthy stocks, while selective gear would help minimize catch of GB cod and GB yellowtail flounder.

Since this area was initially closed, an area within the proposed CA I Exemption Area has been open to allow a special access program for groundfish hook vessels fishing for haddock. In addition, a portion of CA I proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004. As a result, the seabed in this area has been disturbed by scallop dredges and is therefore not a preserved habitat area. Furthermore, analyses for the Habitat Omnibus Amendment did not identify this area as vulnerable to trawl gear and this area is not identified for any proposed essential fish habitat (EFH) protections. There are minimal concerns regarding impacts to protected species in this area. While there were initial concerns about effort shifts from lobster gear in the area, an analysis of lobster effort in the area indicates that there is very little lobster effort in the proposed CA I Exemption Area. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species. More information on lobster effort in the proposed areas is available in the accompanying EA.

2. Closed Area II Exemption Area

If this proposed exemption is approved without any changes in response to any EFP results during FY 2014, the central portion of CA II would be opened seasonally to selective gear from the date of the final rule approving this exemption is published, through December 31, 2014. The gear restrictions in CA II are the same as those proposed for CA I—selective trawl and hook gear only. Vessels fishing with selective trawl and hook gear would be permitted in this area when specified (see below). Vessels would be prohibited from fishing with gillnets and flounder nets in this exemption area. As noted above, GB haddock has fully recovered, is rebuilt, and is consistently under-harvested. Selective gear is proposed to minimize the catch of GB cod and yellowtail flounder, both of which are considered overfished and subject to overfishing.

The offshore lobster industry and sector trawl vessels proposed a rotational gear-use agreement for the CA II Exemption Area and the FY 2013 proposed sector rule included this proposed agreement (a copy of the agreement is included as an appendix in the EA). The restrictions proposed in the rotational gear use agreement have been adopted by the Atlantic States Marine Fisheries Commission, which modified the Interstate Fisheries Management Plan for American Lobster through Addendum XX to the lobster plan. This FY 2014 proposed rule incorporates most portions of that agreement; a more detailed explanation is below.

The proposed seasons and gear requirements incorporate the rotational gear-use agreement and mitigate fishing effort on yellowtail flounder and spawning cod:

- May 1–June 15: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.
- June 16–October 31: Sector trawl vessels would be prohibited, lobster and sector hook gear vessels only.
- November 1–December 31: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.
- January 1–April 30: Lobster vessels permitted; sector groundfish vessels would be prohibited in CA II during this time.

The gears and seasons listed above match the agreement between the offshore lobster industry and sector trawl vessels, including the groundfish prohibition of fishing in CA II after December 31. A January 1 through April 30 closure reflects the need to avoid impacts on spawning stocks of GB cod. Because approval of this exemption would only be considered after the outcome of an EFP, any action approving access to the CA II Exemption Area would likely occur part-way through FY 2014, rendering some of the agreement moot.

The agreement between the offshore lobster industry and sector vessels reduces concerns of gear conflicts in the area. Analyses for the EA indicate that only a small portion of the annual lobster catch from this portion of CA II is harvested during November. No trips were reported in the proposed area during December 2011 or 2012. As a result, the displacement of lobster effort into other areas is expected to be minimal. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species in other locations.

Similar to CA I, allowing vessels into this area would increase their opportunities to target healthy stocks of GB haddock, and selective gear would be required to reduce bycatch of overfished stocks. Although the Council specified in FW 48 that vessels could fish in the CA II Exemption Area until February 15, we are proposing to prohibit vessels from this area after December 31 due to impacts on GB cod spawning. While this area has been closed year-round to groundfish fishing since 1994, the majority of the seabed in this area is sand and is impacted by strong currents. As a result, this area is not considered to be vulnerable to trawl gear. Some areas are shallow enough that the bottom is affected by wave action; therefore, bottom trawling in this area would likely have minimal impact on benthic habitats. Furthermore, analyses for the Habitat Omnibus Amendment have not identified this area for any proposed EFH protections. There are minimal concerns regarding impacts to protected species in this area.

100% Industry-Funded At-Sea Monitoring Requirement When Accessing Closed Areas I and II

Should access to CAs I and/or II be approved after analysis of the results of an EFP, NMFS intends to maintain the 100-percent industry-funded monitoring requirement for these trips. The intent of the EFP would be to provide industry with enough information to determine whether it would be economically viable to go into these areas with an industry-funded monitor. While a short-term EFP would provide us with some data on catch rates and the use of selective gear, the short duration of the EFP would not provide us with different seasonal information to warrant less than 100-percent ASM coverage. As we stated in the FY 2013 sector final rule, monitoring every trip would allow us to respond more quickly, should there be an unanticipated impact in these areas, such as increased harvests of juveniles, large adult spawners, or impacts on

protected species. As mentioned earlier, we are particularly concerned about impacts to the severely overfished stocks of GB cod and yellowtail flounder. Because CAs I and II were initially developed to afford protection for overfished groundfish stocks and we have no catch data for these areas, we believe that it is critical that we receive reliable catch information from these areas.

3. Nantucket Lightship CA Exemption

In FY 2013, we approved an exemption that allowed sector vessels access to the Eastern and Western Exemption Areas within the Nantucket Lightship CA for the duration of FY 2013. For a detailed description of the exemption request and justifications for approving it, see the final rule (78 FR 41772, December 16, 2013). In summary, trawl vessels were restricted to using selective trawl gear, flounder nets were prohibited, hook vessels were permitted, and gillnet vessels were restricted to fishing 10-inch (25.4-cm) or larger diamond mesh. Gillnet vessels were required to use pingers when fishing in the Western Exemption Area from December 1—May 31 because this area lies within the existing SNE Management Area of the Harbor Porpoise Take Reduction Plan. Unlike the CA I and II proposal, we specified that at-sea observer coverage would come from the combined NEFOP and ASM target coverage level of 22 percent in FY 2013 for the Nantucket Lightship CA after further review and in response to public comments. Consistent with that requirement, we now propose that this exemption be continued for FY 2014, with observed trips included in the overall target sector coverage level of 26 percent for NEFOP and ASM combined.

For FY 2014, we are proposing access to the Eastern and Western Exemption Areas within the Nantucket Lightship CA, with a slight modification from what was approved in FY 2013. To address comments from trawl fishermen that the FY 2013 gear restrictions prevented them from fishing in this area as intended, we reviewed our decision and found that a ''source population'' of SNE/MA yellowtail flounder that we previously expressed concern about is found primarily in the Eastern Area of the Nantucket Lightship CA. The data suggest that yellowtail flounder are not concentrated nearly as much in the Western Exemption Area. Based on this, we are proposing to allow all legal trawl gear to be fished in the Western Exemption Area, while still maintaining the selective trawl gear requirements and prohibition on flounder nets in the Eastern Exemption Area.

If approved, this measure would allow sector vessels to access the eastern and western portions of the Nantucket Lightship CA. The central area is EFH and is not proposed to be re-opened. Trawl vessels would be restricted to the use of selective trawl gear in the Eastern Exemption Area, including the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action. Flounder nets would be prohibited. However, in the Western Exemption Area, all legal trawl gear would be permitted. In both areas, gillnet vessels would be restricted to fishing 10-inch (25.4-cm) diamond mesh or larger. This would allow gillnet vessels to target monkfish and skates while reducing catch of flatfish. Because the western area lies within the SNE Management Area of the Harbor Porpoise Take Reduction Plan, gillnet vessels would be required to use pingers when fishing in the Nantucket Lightship CA—Western Exemption Area between December 1 and May 31.

Opening the eastern and western portions of the Nantucket Lightship CA to trawl gear is not expected to have any significant adverse habitat impacts. While this area has been closed year-round to groundfish fishing since 1994, the eastern portion proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004—so it has been subject to fishing by mobile bottom-tending gear. The western portion is referred to as the ''mudhole'' with a benthic habitat not vulnerable to bottom trawling. Therefore, bottom impacts from opening this area are anticipated to be minimal. Furthermore, analyses for the Habitat Omnibus Amendment have not identified this area for any proposed EFH protections. There are minimal concerns regarding impacts to protected species in this area.

New Exemption Proposed (1)

(20) 6-inch (15.2-cm) Mesh Size of Greater for Directed Redfish Trips

Minimum mesh size restrictions (§ 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i), and (c)(2)(i)) were implemented under previous groundfish actions to reduce overall mortality on groundfish stocks, change the selection pattern of the fishery to target larger fish, improve survival of sublegal fish, and allow sublegal fish more opportunity to spawn before entering the fishery. Beginning in FY 2012, sectors were allowed to use a 6-inch (15.2-cm) mesh codend to target redfish in the Gulf of Maine. Subsequently, based on catch information from ongoing redfish research showing areas with large amounts of redfish, at the end of FY 2012 and into FY 2013 sectors were allowed to use a 4.5-inch (11.4-cm) mesh codend to target redfish. To date, the exemption has required 100-percent monitoring with either an ASM or observer onboard every trip, primarily because of concerns over a greater retention of sub-legal groundfish, as well as non-allocated species and bycatch. Once sectors were allowed the use of a 4.5-inch (11.4-cm) mesh codend under the redfish exemption, all trips were monitored for target and bytcatch thresholds to ensure compliance with the intent of the exemption, which is to target redfish. Additionally, the thresholds were monitored at the sub-trip level, whereby hauls using mesh 4.5 inches (11.4 cm) and greater were monitored separately from hauls not using the exemption (i.e., hauls using mesh 6.5 inches (16.5 cm) and greater). While this provided additional flexibility to switch codends during the trip and, therefore, allowed vessels to switch between using and not using the exemption on a given trip, it added an additional layer of monitoring for these trips. Having monitors on every redfish exemption trip has allowed NMFS to observe changes in catch rates of target and non-target species when using different codend mesh sizes, helping to ensure that we can monitor the use of the exemption (i.e., accurately monitor catch thresholds), when requested to do so, on a haul-by-haul level.

TABLE 5—REDFISH EXEMPTIONS FROM PREVIOUS FYS

Exemptions	Rulemaking	Date	Citation
6.0 inch with 100% NMFS-funded coverage	FY 2012 Sector Operations Final Rule	May 2, 2012	77 FR 26129.
4.5 inch with 100% NMFS-funded coverage	FY 2012 Redfish Exemption Final Rule	March 5, 2013	78 FR 14226.
4.5 inch with 100% Industry-funded coverage	FY 2013 Sector Operations Interim Final Rule	May 2, 2013	78 FR 25591.

NE Multispecies FR documents can be found at *http://www.nero.noaa.gov/sfd/sfdmultifr.html.*

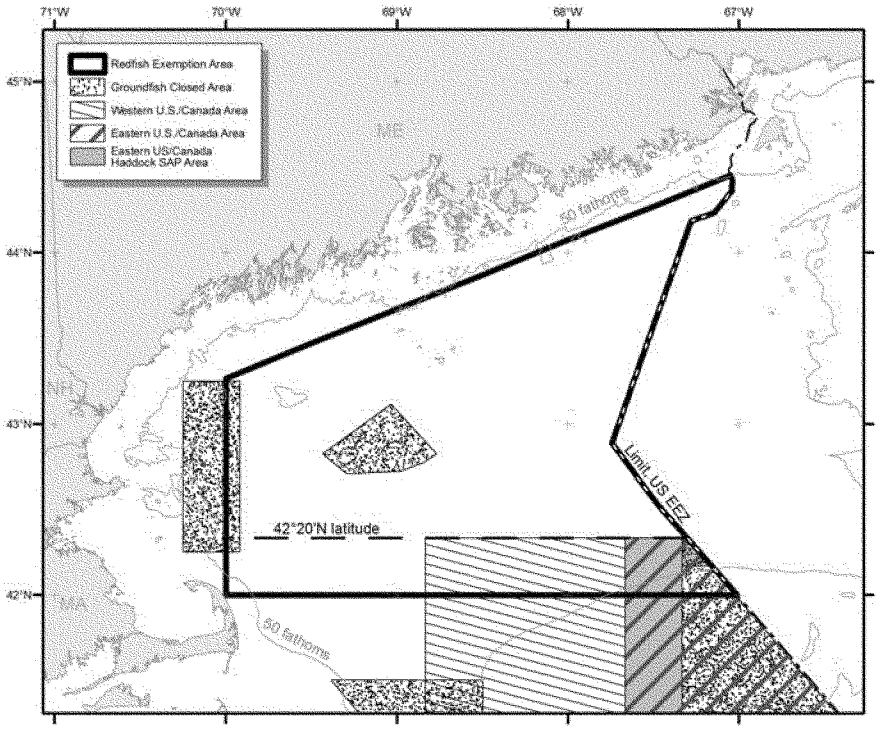
As of the end of FY 2012, 14 trips had used the exemption allowing a 4.5-inch (11.4-cm) mesh codend, and all trips were monitored by either a federally funded NEFOP observer or ASM. While most trips were effectively able to target redfish and minimize groundfish discards, not all trips were able to meet the target and bycatch thresholds. In preparation for the FY 2013 rule, we raised numerous concerns about the impacts of implementing additional monitoring requirements and using federally funded monitoring for the exemption. We found that allowing trips that are randomly selected for federally funded NEFOP or ASM coverage provided an incentive to take an exemption trip when selected for coverage, thereby reducing the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing this exemption). If fewer observers/monitors deploy on standard sector trips, then the exemption undermines both the ability to meet required coverage levels and the reliability of discard rates calculated for unobserved standard sector trips. Therefore, beginning in FY 2013, we required sectors using this exemption to pay for 100 percent of the at-sea cost for a monitor on all redfish exemption trips. To date, sectors have not submitted an ASM proposal to monitor trips using this exemption in FY 2013 and, therefore, no trips have used the exemption in FY 2013.

For FY 2014, we are proposing an exemption that would allow vessels to use a 6-inch (15.2-cm) or larger mesh codend to target redfish when fishing in the Redfish Exemption Area (see below). The vessels participating in the redfish fishery would be subject to the same NEFOP and ASM target coverage as standard groundfish trips (i.e., less than 100 percent of trips would be monitored). NMFS believes that the standard target coverage is appropriate for FY 2014 for the following reasons. First, there are fewer concerns regarding the retention of sub-legal groundfish and non-allocated species when using a 6-inch (15.2-cm) or larger mesh codend, versus when the exemption allowed the use of 4.5-inch (11.4-cm) or larger codend. Second, at the request of the sectors, we would monitor the exemption for an entire trip, rather than for part of a trip. That is, regardless of how many 6-inch (15.2-cm) or 6.5-inch (16.5-cm) mesh codend hauls are made on a given trip, it would not change the applicability of any restrictions associated with the exemption (e.g., thresholds). This approach would allow vessels to retain the flexibility to switch codends during a redfish trip and allow us to monitor the thresholds at the trip level versus the haul level. Because a 6-inch (15.2-cm) mesh and a 6.5-inch (16.5-cm) mesh codend net fall under the same ''large'' mesh category for both stock assessments and the SBRM, there is less concern for monitoring the differences in selectivity and bycatch patterns compared to trips that had previously been allowed the use of a 4.5-inch (11.4-cm) mesh codend net, which falls under a different category for stock assessments and the SBRM. For all trips, VTRs would be used to identify whether or not the 6-inch (15.2-cm) mesh codend net was actually used on the trip. Lastly, both observed and unobserved redfish trips would be considered a separate strata from non-redfish trips. There are expected behavioral and catch rate differences given the thresholds that apply to the exemption, and because of the requirement to use the exemption in a defined area.

Under this exemption, a vessel would be required to declare its intent to use 6-inch (15.2-cm) mesh codend nets to target redfish by submitting a Trip Start Hail through its VMS unit prior to departure. The hail would be used for monitoring and enforcement purposes. A vessel may fish using a 6-inch codend (15.2-cm), or greater, on a standard trawl within the GOM and GB BSAs, exclusively in the Redfish Exemption Area defined below. However, consistend with current requirements, each time the vessel switches codend mesh size or statistical area, it must fill out a new VTR. For all trips (by sector, by month) declaring this exemption, NMFS would continue to monitor landings for the entire trip to determine if 80 percent of the total groundfish catch is redfish; and for observed trips only, determine if total groundfish discards, including redfish, is less than 5 percent of total catch. The NMFS Greater Atlantic Regional Administrator (RA) reserves the right to rescind the approval of this exemption for the sector in question if a sector does not meet these thresholds. The thresholds are based upon Component 2 of the REDNET report (Kanwitt 2012) and observer data for trips conducted in FY 2012. REDNET is a group that includes the Maine Department of Marine Resources, the Massachusetts Division of Marine Fisheries, and the University of Massachusetts School for Marine Science and Technology joined with other members of the scientific community and the industry to develop a research plan to develop a sustainable, directed, redfish trawl fishery in the GOM.

Vessels that have declared into this exemption may also fish in the GB BSA under the universal exemption that allows the use of a 6-inch (15.2-cm) mesh codend nets in the GB BSA while using selective trawl gear (e.g., haddock separator trawl, Ruhle trawl). These would be areas on GB, south of the Redfish Exemption Area. Vessels that declare the redfish exemption may also use codends with a 6.5-inch (16.5-cm) mesh codend, or larger, in any open area on the same trip. This is similar to the flexibility given to vessels using a 6-inch (15.2-cm) mesh codend in the GB BSA while using selective trawl gear, and then fishing in another BSA with a 6.5-inch (16.5-cm) mesh codend using a standard trawl. Allowing vessels to fish both inside and outside the Redfish Exemption Area on the same trip provides flexibility to target other allocated stocks after successfully targeting redfish; however, all catch from each trip declaring this exemption would be considered in evaluating compliance with the thresholds. Because this exemption is designed for vessels to target redfish in the defined area, but allows the flexibility of using multiple mesh sizes and/or trawl types in multiple areas, all on the same trip, the NOAA Office of Law Enforcement (OLE) has expressed some concern about enforcing the exemption. Therefore, we are specifically seeking comment on this exemtpion, given the enforcement concerns.

Figure 3 – Redfish Exemption Area



The Redfish Exemption Area is bounded on the east by the U.S.-Canada Maritime Boundary, and bounded on the north, west, and south by the following coordinates, connected in the order listed by straight lines:

Point	N. lat.	W. long.	Note
A	44°27.25′	67°02.75′	.....
B	44°16.25′	67°30.00′	.....
C	44°04.50′	68°00.00′	.....
D	43°52.25′	68°30.00′	.....
E	43°40.25′	69°00.00′	.....
F	43°28.25′	69°30.00′	.....
G	43°16.00′	70°00.00′	.....
H	42°00.00′	70°00.00′	.....
I	42°00.00′	(67°00.63′)	(1)

(1) The intersection of 42°00′ N. latitude and the U.S.-Canada Maritime Boundary, approximate longitude in parentheses.

The proposed FY 2014 Redfish Exemption Area would have slight modifications from previous years. In the west, the boundary has shifted from 69°55′ W. long. to 70°00′ W. long. This change incorporates the request to fish in some areas of deeper water that were previously not accessible on a redfish trip. Vessels would continue to be excluded from the Western GOM CA. In the south, the boundary of 42°00′ N. lat. would extend all the way to the Hague Line, which also adds some areas with deeper water that was previously not accessible on a redfish trip. Vessels would still be required to comply with the seasonal restrictions of accessing the northern portions of CA II through the Eastern U.S./Canada Haddock SAP. Lastly, a northern boundary would be added to mimic the 44460 Loran line, which was a historic reference for vessels wishing to fish in waters greater than 50 fathoms (91.4 m). The new northern boundary is being added to address concerns from the NEFSC that juvenile groundfish are primarily found in shallower water (<50 fathoms (91.4 m)) in the northern GOM. Prohibiting the use of small mesh in these shallower area would afford protection for these juvenile fish.

We specifically request comment on reducing the monitoring on these trips to the same level as standard sector trips (i.e., less than 100 percent of trips), and the degree to which industry would be able to take advantage of this exemption. We also request comment on revoking this exemption during the FY, if necessary to mitigate impacts. Lastly, we request comment on the enforceability of vessels using this exemption when also fishing outside of the redfish area on the same trip.

If the small-mesh redfish exemption is approved, we intend to monitor the exemption very carefully. For example, should it be determined that vessels are not using the exemption when assigned an observer or ASM, and only using it when unobserved, we would have concerns about monitoring the exemption. Additionally, if vessels were switching between 6-inch (15.2-cm) and 6.5-inch (16.5-cm) mesh codends, and not sending the appropriate information on their VTR(s), we would have concerns. Given these concerns, we remind sectors that the RA retains authority to rescind approval of this exemption, if it is needed.

Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided (2)

We propose to deny the following two exemption requests because they were previously rejected as proposed, and the requesting sectors provided no new information that would change our previous decision: (21) GOM Sink Gillnet Mesh Exemption in May, and January through April; and (22) 6.5-inch (16.51-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM with codend mesh size as small as 4.5-inch (11.4-cm) with 100 percent NMFS-funded observers or ASMs. We did not analyze these exemptions in the FY 2014 sector EA because no new information was available to change the analyses previously published in past EAs.

The GOM Sink Gillnet Mesh Exemption was proposed for FY 2013,

however, due to concerns regarding the stock status of GOM haddock and the potential increase in interactions with protected species, the exemption was denied for FY 2013 (78 FR 25591, May 2, 2013). The justifications for denying this exemption request in FY 2013, remain for FY 2014.

We received an exemption request for redfish trips using a 4.5-inch (11.4-cm) mesh size for FY 2013 and, at the time, raised concern about providing NMFS-funded observers or ASMs for this exemption in both the proposed rule (78 FR 16220, March 14, 2013) and the final rule (78 FR 25591, May 2, 2013). In summary, we found that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage provided an incentive to take an exemption trip when selected for coverage, thereby reducing the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing this exemption). Given these concerns, we approved the exemption for FY 2013, but required industry-funded monitoring for at-sea costs on 100 percent of the trips using the exemption. We have required 100 percent industry-funded monitoring due to concerns over a greater retention of sub-legal groundfish, non-allocated species bycatch, and because of the additional requirements of monitoring the exemption at the sub-trip level.

The redfish request to use a 4.5-inch (11.4-cm) mesh codend nets for FY 2014 with a NMFS-funded observer or ASM onboard, rather than with an industry-funded monitor, is identical to the request for FY 2013. We continue to have similar concerns about this requested exemption as we did last year, primarily because the request requires a NMFS-funded observer or ASM. Because of the reasons described above for not approving access to this exemption when using a federally funded NEFOP or ASM, we are proposing to deny this exemption request.

A second redfish exemption request, described above (exemption #20), is proposed for approval.

Requested Exemptions We Propose To Deny Because They Are Prohibited (6)

We propose denying the following six exemption requests and do not analyze them in the EA because they are prohibited or not authorized by the NE multispecies regulations. These include exemptions from: (23) pre-trip notification system (PTNS) requirements, (24) ASM and observer requirements for vessels using the electronic monitoring (EM) program, (25) prohibition on permit splitting, and (26) ASM requirements for handgear vessels. In addition, sector have requested that we: (27) Exclude 10-inch (25.4-cm) mesh or greater gillnets from the list of ''gear capable of catching groundfish/multispecies'', and (28) exempt 10-inch (25.4-cm) mesh or greater gillnets from all groundfish regulations.

PTNS is not a regulatory requirement; rather, it is a means for selecting and distributing observer and ASM coverage in the fishery. PTNS is required for all sector trips as part of the NMFS monitoring program until a sector has an approved ASM program that includes a system for distributing monitoring. Sectors are prohibited from requesting exemptions from permitting restrictions (i.e., including permit splitting) and gear restrictions designed to minimize habitat impacts. Because sectors are also prohibited from requesting exemptions from reporting requirements (including ASM requirements), we will not consider requests for exemptions from ASM. Moreover, we have not approved EM as an acceptable monitoring tool for the NE multispecies fishery at this time, so it cannot replace observers or ASM. NMFS and the Council are currently in the final phase of studying the applicability of EM.

Amendment 16 authorized NMFS to grant sectors exemptions from specified multispecies management measures. Exemption requests #27 and #28, are an attempt to exclude certain trips from all groundfish management measures, except ACLs. The sector requesting the exemption submitted catch data to support the exemption request. However, the data submitted were only from trips using gillnets with 10-inch (25.4-cm) mesh or greater, that had low groundfish catch, rather than all trips using the gear, regardless of the amount of groundfish caught. While groundfish catch by this gear may be minimal during certain times of the year, in certain areas, or by certain vessels, the catch data submitted are not representative of all trips that use extra-large mesh gillnets. In fact, there are data showing that some vessels use extra-large mesh gillnets to target groundfish in the GOM and GB in some cases have caught significant amounts of groundfish as bycatch when targeting other fisheries. It would be more appropriate to consider specific areas and times where 10-inch (25.4-cm) mesh or greater gillnets could be used with minimal groundfish catch independent of the sector exemption request process; specifically, through an exempted fishery request for targeting non-groundfish species (i.e., monkfish, skates).

NMFS may only grant sectors exemptions from certain groundfish regulations, and such exemptions apply only to groundfish trips made by sector vessels. An exemption from the definition of gear capable of catching groundfish is not possible because it would effectively define the trip in question as a non-groundfish trip, which would make the trip ineligible for sector exemptions. Further, we believe Amendment 16 prohibits NMFS from granting either an exemption from the definition of gear capable of catching groundfish, or from all groundfish regulations, because it would be a *de facto* exemption from reporting requirements (e.g., PTNS call-in requirements, ASM requirements, and application of the discard calculation methodology), which was expressly prohibited by Amendment 16.

Additional Sector Provisions

Inshore GOM Restrictions

Several sectors (with the exception of NEFS 4) have proposed a provision to limit and more accurately document a vessel's behavior when fishing in what they consider the inshore portion of the GOM BSA, or the area to the west of 70° 15′ W. long. A vessel that is carrying an observer or ASM would remain free to fish without restriction. As proposed under the Inshore GOM Restriction provision, if a vessel is not carrying an observer or ASM and fishes any part of its trip in the GOM west of 70° 15′ W. long, the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or ASM and fishes any part of its trip outside the GOM BSA, this provision would prohibit a vessel from fishing west of 70° 15′ W. long. in the GOM BSA. The sector's proposal includes a requirement for a vessel to declare whether or not it intends to fish in the inshore GOM area through the trip start hail. We are providing sector managers with the ability to monitor this provision through the Sector Information Management Module (SIMM), a Web site where we currently provide roster, trip, discard, and observer information to sector managers. If approved, final declaration requirements would be outlined in the final rule and included in each vessel's LOA. We propose to allow a sector to use a federally funded NEFOP observer or ASM on these trips because we do not believe it will create bias in coverage or discard estimates, as fishing behavior is not expected to change as a result of this provision.

Prohibition on a Vessel Hauling Another Vessel's Trap Gear to Target Groundfish

The NCCS requested an exemption to allow a vessel to haul another vessel's fish trap gear, similar to the current exemptions that allow a vessel to haul another vessels gillnet gear, or hook gear. These exemptions have generally been referred to as ''community'' gear exemptions. Unlike hook and gillnet gear, the NE multispecies FMP does not prohibit a vessel from hauling another vessel's trap gear, therefore, we cannot grant an exemption. Because of this, it is more appropriate to consider community fish trap gear as a ''provision'' of the sector operations plan, rather than a requested exemption.

Regulations at § 648.84(a) require a vessel to mark all bottom-tending fixed gear, which would include fish trap gear used to target groundfish. To facilitate enforcement of that regulation, we propose requiring that any community fish trap gear be tagged by each vessel that plans on hauling the gear. This would allow one vessel to deploy the trap gear and another vessel to haul the trap gear, provided both vessels tag the gear prior to deployment. This requirement could be captured in the sector's operations plan to provide the opportunity for the sector to monitor the use of this provision and ensure that the OLE and the U.S. Coast Guard can enforce the provision.

At-Sea Monitoring Proposals

Prior to the publication of this proposed rule, we announced that we would pay for ASM on sector trips during FY 2014, in addition to trips assigned a NEFOP observer. Therefore, the sector's ASM proposals for FY 2014 are no longer applicable, and will be removed from the sector's final operations plans.

Sector EA

In order to comply with NEPA, one EA was prepared encompassing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit *http://www.regulations.gov* to view the EA prepared for the 19 sectors that this rule proposes to approve.

Classification

The Administrative Procedure Act (5 U.S.C. 553) requires advance notice of rulemaking and opportunity for public comment. The Council required additional time to determine stock allocations for some stocks for FY 2014, which delayed our ability to present this to the public. We are therefore providing a 15-day comment period for this rule. A longer comment period would be impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2014 on May 1, 2014, to enable sectors to fish at the start of the FY. A vessel enrolled in a sector may not fish in FY 2014 unless its operations plan is approved. If the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved or elect to fish in the common pool for the entirety of FY 2014. Both of these options would have very negative impacts for the permits enrolled in the sectors. Delaying the implementation beyond May 1, 2014, would result in an unnecessary economic loss to the sector members because vessels would be prevented from fishing in a month when sector vessels landed approximately 10 percent of several allocations, including GB cod east and GB winter flounder. Finally, without a seamless transition between FY 2013 and 2014, a delay would require sector vessels to remove gear that complies with an exemption, and redeploy the gear once the final rule is effective. Talking these additional trips would require additional fuel and staffing when catch may not be landed.

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed action is exempt from the procedures of Executive Order 12866 because this action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As outlined in the preamble to this proposed rule, the purpose of this action is the implementation of FY 2014 sector operations plans and associated regulatory exemptions. In an effort to rebuild the NE multispecies complex, other actions have reduced the allocations of several stocks managed by the NE Multispecies FMP. This action is needed to provide flexible fisheries management that alleviates potential social and economic hardships resulting from those reductions. This action seeks to fulfill the purpose and need while meeting the biological objectives of the NE Multispecies FMP, as well as the goals and objectives set forth by the Council in the NE Multispecies FMP.

The regulated entities most likely to be affected by the proposed action are the 130 groundfish-dependent ownership entities that own permits currently enrolled in sectors, all of which are considered small under the SBA's definition of a small business.

Under the proposed rule, sector operations plans for FY 2014 would be approved, allowing sector participants to use the universal sector exemptions granted under Amendment 16 to the NE Multispecies FMP. In addition to the universal sector exemptions granted under the approval of individual sector operations plans, sector participants have requested relaxation of 28 other gear, area, administrative, and seasonal restrictions. This rule proposes to grant 20 of these exemptions. Because all of the regulated entities are considered small businesses per the SBA guidelines, the impacts of participating in sectors and using the universal exemptions and additional exemptions requested by individual sectors are not considered to be disproportional.

All of the requested sector-specific exemptions in this proposed rule are expected to have a positive economic impact on participants, as they further increase the flexibility of fishermen to land their allocation at their discretion. By choosing when and how to land their allocations sector participants have the potential to reduce marginal costs, increase revenues, and ultimately increase profitability. Again, it is expected that fishermen will only use sector-specific exemptions that they believe will maximize utility, and that long-term stock impacts from the collective exemptions will be minimal and will be outweighed by benefits from operational flexibility.

This rule would not impose significant negative economic impacts. No small entities would be placed at a competitive disadvantage to large entities, and the regulations would not reduce the profit for any small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: March 11, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–05762 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 51

Monday, March 17, 2014

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 10, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA *Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Special Nutrition Program Operations Study—Year 3.

OMB Control Number: 0584–0562.

Summary Of Collections: The objective of the Special Nutrition Program Operations Study (SNPOS) is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs. The ultimate goal of the study is to analyze these data and provide input for new legislation on Child Nutrition (CN) Programs as well as to provide pertinent technical assistance and training to program implementation staff. This study is necessary to implement Sec. 28(a)(1) of the Richard B. Russell National School Lunch Act. This legislation directs the U.S. Department of Agriculture to carry out annual national performance assessments of the School Breakfast Program and the National School Lunch Program.

Need and Use of the Information: The purpose of the study is to implement a modular data collection system and collect routine data on specific aspects of the child nutrition program, specifically on the program characteristics, administration, and operation of CN programs. The findings from this study will be used to identify program operational and policy issues, and topics for technical assistance and training. The information will be collected from a nationally representative sample of School Food Authorities Directors, State Child Nutrition Directors.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 1,941.

Frequency of Responses: Reporting; Other (One time).

Total Burden Hours: 3,345.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–05735 Filed 3–14–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–14–0023; NOP–14–04]

National Organic Program Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for a new information collection: National Organic Program (NOP); Organic Certification Cost-Share Programs.

DATES: Comments on this notice must be received by May 16, 2014 to be assured of consideration.

ADDRESSES: Interested parties are invited to submit written comments concerning this notice. Comments should be submitted online at *www.regulations.gov* or sent to Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, AMS/USDA, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268. Written comments responding to this notice should be identified with the document number AMS–NOP–14–0023; NOP–14–04. It is USDA's intention to have all comments concerning this notice, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov Internet site (*http://www.regulations.gov*). Comments submitted in response to this notice will also be available for viewing in person at USDA/AMS/National Organic Program, 1400 Independence Ave. SW., Room 2646–So. Ag Stop 0268, Washington, DC 20250 from 9 a.m. to 12 noon and from 1:00 p.m. to 4 p.m. Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this notice are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program (NOP); Organic Certification Cost-Share Programs.

OMB Number: 0581—NEW.

Expiration Date of Approval: Three years from OMB approval date.

Type of Request: New information collection.

Abstract: The information collection requirements in this request are applied only to those State Departments of Agriculture and organic producers and handlers who voluntarily participate in one of two organic certification cost-share programs: The National Organic Certification Cost-Share Program (NOCCSP) or the Agricultural Management Assistance (AMA) Organic Certification Cost-Share Program. The NOCCSP is authorized under section 10606(d)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 note), as amended by section 10004(c) of the Agriculture Act of 2014 (2014 Farm Bill; Pub. L. 113–79). Under this authority, USDA is authorized to provide organic certification cost-share assistance through 50 States, the District of Columbia, and five U.S. Territories (herein called ''state agencies''). The AMA is authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, USDA is authorized to provide organic certification cost-share assistance through sixteen states: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. To prevent duplicate assistance payments, producers participating in the AMA program are not eligible to participate in the producer portion of the NOCCSP.

Each program provides cost-share assistance, through participating state agencies, to organic producers and, in the case of NOCCSP, to organic handlers. Recipients must receive initial certification or continuation of certification to the USDA organic regulations (7 CFR part 205) from a USDA-accredited certifying agent. Reimbursement is currently available at 75 percent of an operation's certification costs, up to a maximum of $750 per year. The information collected from these respondents is needed to ensure that program recipients are eligible for funding and comply with applicable program regulations. Data collected is the minimum information necessary to effectively carry out the requirements of each program.

In accordance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act (44 U.S.C. 3501–3520) (PRA), the information collection requirements associated with the NOP have been previously approved by OMB and assigned OMB control number 0581–0191. A new information collection package is being submitted to OMB for approval of 13,120 hours in total burden hours to cover this new collection for the two organic certification cost-share programs. Upon OMB's approval of this new information collection, the NOP intends to merge this collection into currently approved OMB Control Number 0581–0191. In accordance with 5 CFR part 1320, we have included below a description of the collection and recordkeeping requirements and an estimate of the annual burden on entities who would be required to provide information through these cost-share programs. Upon OMB's approval of this new information collection, the NOP intends to merge this collection into currently approved OMB Control Number 0581–0191.

State agencies who wish to participate in one or, if applicable, both of these organic certification cost-share programs must submit the following:

(a) SF–424, ''Application for Federal Assistance,'' (approved under OMB collection number 4040–0004) is required to apply for federal assistance.

(b) USDA/AMS–33 Face Page (Agreement Face Sheet). The Agreement Face Sheet sets forth the agreed upon responsibilities of AMS project work. It also indicates the agreed upon grant funding dollar amounts and the beginning date and ending date of the project work and the grant agreement. One copy of this Agreement Face Sheet is required to be returned to AMS with the date and grantee's signature(s).

Estimate of Burden: Public reporting burden for this collection of information under (a) and (b) is estimated to average 2 hours per response.

Respondents: State agencies.

Estimated Number of Respondents: 56 (All 50 States, plus the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands).

Estimated Total Annual Responses: 56 responses.

Estimated Number of Responses per Respondent: 1 response per respondent.

Estimated Total Annual Burden on Respondents: 112 hours.

(c) SF–270, ''Request for Advance or Reimbursement,'' (approved under OMB collection number 0348–0004) is required whenever the grantees request an advance or reimbursement of Federal grant funds. AMS expects that at least 112 SF–270 forms (two per state agency) will be submitted per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: State agencies.

Estimated Number of Respondents: 56.

Estimated Total Annual Responses: 56 responses.

Estimated Number of Responses per Respondent: 2 responses per respondent.

Estimated Total Annual Burden on Respondents: 224 hours.

(d) SF–425, ''Federal Financial Report,'' (approved under OMB collection number 0348–0061) is required semi-annually to report grantee expenditures.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: State agencies.

Estimated Number of Respondents: 56.

Estimated Total Annual Responses: 56 responses.

Estimated Number of Responses per Respondent: 2 responses per respondent.

Estimated Total Annual Burden on Respondents: 448 hours.

(e) Narrative Report is required annually and describes program activities undertaken by the State agency and/or any sub-recipients throughout the funding period.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: State agencies.

Estimated Number of Respondents: 56.

Estimated Total Annual Responses: 56 responses.

Estimated Number of Responses per Respondent: 1 response per respondent.

Estimated Total Annual Burden on Respondents: 112 hours.

(f) Spreadsheet of Operations Reimbursed is required semi-annually and lists the producers receiving cost-share payments within the reporting time period.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: State agencies.

Estimated Number of Respondents: 56.

Estimated Total Annual Responses: 56 responses.

Estimated Number of Responses per Respondent: 2 responses per respondent..

Estimated Total Annual Burden on Respondents: 224 hours.

Finally, in accordance with 7 CFR 3016.42, state departments of agriculture must retain all records relating to these organic cost-share programs for a period of three years after the final Federal Financial Report has been submitted to the Federal Agency, or until final resolution of any audit finding or litigation, whichever is later. Electronic records retention is acceptable. This is a part of normal business practice.

(g) Producers and/or handlers who wish to participate in these organic certification cost-share programs must submit the following to a given state agency once per year: An application, proof of USDA organic certification, an itemized invoice showing expenses paid to a third-party certifying agent for certification services, and a W–9 tax form. Based on past program participation (7,245 participants in NOCCSP and 2,348 participants in AMA last fiscal year), we believe between 10,000 and 12,000 producers or handlers will participate in these programs.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Organic producers or handlers.

Estimated Number of Respondents: 12,000.

Estimated Total Annual Responses: 12,000 responses.

Estimated Number of Responses per Respondent: 1 response per respondent.

Estimated Total Annual Burden on Respondents: 12,000 hours.

These programs will not be maintained by any other agency, therefore, the requested information will not be available from any other existing records.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3540 note), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The SF–424 can be completed electronically and is required to be submitted electronically through *www.grants.gov.*

The SF–425 and SF–270 forms can be filled out electronically and submitted electronically. The USDA/AMS–33 Face Page requires an original signature and must be submitted by mail. Producers typically will mail their application and associated documentation to the state agencies, though some agencies have streamlined paperwork submission through databases of producers and handlers in a given state.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave SW., Room 2648–S Ag Stop 0268, Washington, DC 20250; (202) 720–3252 and FAX (202) 205–7808. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6522

Dated: February 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–05809 Filed 3–14–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will meet in Placerville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meeting is to review operational procedures, evaluate project proposals, prioritize a list of projects for funding in FY 2014, and vote to recommend projects for funding.

DATES: The meetings will be held at 6 p.m. on the following dates:

- March 31, 2014
- April 14, 2014

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, 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 Eldorado National Forest (ENF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kristi Schroeder, RAC Coordinator, by phone at 530–295–5610 or via email at *kschroeder@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/eldorado.* 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 March 24, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee

may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Kristi Schroeder, RAC Coordinator, Eldorado NF Supervisor's Office, 100 Forni road, Placerville, California 95667; or by email to *kschroeder@fs.fed.us*, or via facsimile to 530–621–5297.

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: March 11, 2014.

Laurence Crabtree,

Forest Supervisor.

[FR Doc. 2014–05772 Filed 3–14–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee (RAC) will meet in Forest, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to present proposed projects for discussion and approval.

DATES: The meeting will be held on May 5, 2014 at 6:00 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 Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi. Interested parties may also attend via teleconference by calling: 888–844–9904, access code: 8389256; or via Video Teleconference at the Delta Ranger District, 68 Frontage Road, Rolling Fork, Mississippi.

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 Bienville Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nefisia Kittrell, RAC Coordinator, by phone at 601–469–3811; or by email at *nkittrell@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/ADA00765529071A58825754A0055730D?OpenDocument*. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 18, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Michael T. Esters, Designated Federal Officer, Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi 39074; or by email to *mesters@fs.fed.us,* or via facsimile to 601–469–2513.

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: March 10, 2014.

Michael T. Esters,

District Ranger.

[FR Doc. 2014–05771 Filed 3–14–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects.

DATES: The meeting will be held May 13, 2014 at 1:00 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 Prescott Fire Center, 2400 Melville Drive, Prescott, Arizona.

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 Prescott Fire Center. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordiantor, by phone at 928–443–8130 or via email at *dmaneely@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: 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/prescott/workingtogether/advisorycommittees.* 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 May 5, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Debbie Maneely, RAC Coordiantor, Prescott National Forest Supervisor's Office, 344 South Cortez Street, Prescott, Arizona 86301; or by email to *dmaneely@fs.fed.us,* or via facsimile to 928–443–8208.

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: March 11, 2014.

Teresa A. Chase,

Forest Supervisor.

[FR Doc. 2014–05774 Filed 3–14–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Horticultural Specialties.

DATES: Comments on this notice must be received by May 16, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0236, 2014 Census of Horticultural Specialties, by any of the following methods:

- Email: *ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
- Fax: (202) 720–6396.
- Mail: Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: 2014 Census of Horticultural Specialties.

OMB Control Number: 0535–0236.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for the 2014 Census of Horticultural Specialties survey to be conducted as a follow-on survey from the 2012 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title X—Horticulture and Organic Agriculture) as amended.

The 2014 Census of Horticultural Specialties will use as a sampling universe; every respondent on the 2012 Census of Agriculture who reported production and sales of $10,000 or more of horticultural specialty crops, and is still in business in 2014. In addition, NASS also plans to contact all new operations that have begun producing horticultural specialty products since the completion of the 2012 Census of Agriculture. Data collection will begin around January 1, 2015 for production and sales data for 2014. A final report will be published around December 2015. Data will be published at both the U.S. and State levels where possible.

Authority: The census of horticulture is required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g) as amended. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, i.e., soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Producers of horticultural specialty crops.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden on Respondents: 50,000 hours. NASS will send out a pre-survey letter informing the public of the upcoming survey along with a short explanation of the need for this survey and the potential uses of the published data by data users. We will also provide respondents with instructions on how to access the internet and complete the questionnaire on line. Operators who did not respond by mail or internet will be attempted by either phone or personal interview.

The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and it's follow on surveys.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information will 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 24, 2014.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2014–05841 Filed 3–14–14; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Certified Organic Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by May 16, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0249, by any of the following methods:

- Email: *ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
- Fax: (202) 720–6396.
- Mail: Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Certified Organic Survey.

OMB Control Number: 0535–0249.

Expiration Date of Previous Approval: July 31, 2014.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. In 2009, NASS conducted the 2008 Organic Production Survey (OMB # 0535–0249). This was originally designed to be conducted once every five years as a follow-on-survey to the Census of Agriculture. The USDA Risk Management Agency (RMA) has made a formal agreement with NASS to conduct this as an annual survey, as funding permits, with a rotation of crops. The name of this docket will be changed to Certified Organic Survey. The reference year is the production year previous to the data collection year.

The census-based survey will include all known farm operators who produce organically certified crops and/or livestock. The survey will be conducted in all States. Some operational level data will be collected to use in classifying each operation for summary purposes. The majority of the questions will involve production data (acres planted, acres harvested, quantity harvested, quantity sold, value of sale, etc.), production expenses, and marketing practices.

Approximately 14,000 operations will be contacted by mail in early January, with a second mailing later in the month to non-respondents. Telephone and personal enumeration will be used for remaining non-response follow up. The National Agricultural Statistics Service will publish summaries in October at both the State level and for each major organic commodity when possible. Some State level data may need to be published on regional or national level due to confidentiality rules.

Under the 2014 Farm Bill (Section 11023) some of the duties of the Federal Crop Insurance Corporation (FCIC) are defined as ''(i) IN GENERAL— As soon as possible, but not later than the 2015 reinsurance year, the Corporation shall offer producers of organic crops price elections for all organic crops produced in compliance with standards issued by the Department of Agriculture under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) that reflect the actual retail or wholesale prices, as appropriate, received by producers for organic crops, as determined by the Secretary using all relevant sources of information. ''(ii) ANNUAL REPORT.— The Corporation shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report on progress made in developing and improving Federal crop insurance for organic crops, including—''(I) the numbers and varieties of organic crops insured; ''(II) the progress of implementing the price elections required under this subparagraph, including the rate at which additional price elections are adopted for organic crops; ''(III) the development of new insurance approaches relevant to organic producers; and ''(IV) any recommendations the Corporation considers appropriate to improve Federal crop insurance coverage for organic crops.''.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 30 minutes per response.

Respondents: Farmers and Ranchers.

Estimated Number of Respondents: 14,000.

Estimated Total Annual Burden on Respondents: 8,000 hours (based on an estimated 80% response rate, using 2 mail attempts, followed by phone and personal enumeration for non-respondents).

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 27, 2014.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2014–05843 Filed 3–14–14; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reinstate a Previously Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request the renewal, with changes, to a currently approved information collection, the Conservation Effects Assessment Project (CEAP) Survey. Revision to burden hours will be needed due to changes in the size of the target, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by May 16, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0245, Conservation Effects Assessment Project (CEAP) Survey, by any of the following methods:

- Email: *ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
- Fax: (202) 720–6396.
- Mail: Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- Hand Delivery/Courier: Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Conservation Effects Assessment Project (CEAP) Survey.

OMB Control Number: 0535—0245.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The Conservation Effects Assessment Project (CEAP) was initiated by the United States Department of Agriculture (USDA) in 2003 as a multi-agency effort to quantify the environmental effects of conservation practices on agricultural lands. As part of this assessment, the National Agricultural Statistics Service (NASS) conducted on-site interviews with farmers during 2003–2006 to document tillage and irrigation practices, application of fertilizer, manure, and pesticides, and use of conservation practices at sample points drawn from the Natural Resources Inventory (NRI) sampling frame. These data were linked through the NRI frame to the Natural Resources Conservation Service (NRCS) soil, climate, and historical survey databases. The combined information was used to model the impact on soil and water resources and to estimate the benefits of conservation practices, including nutrient, sediment, and pesticide losses from farm fields, reductions of in-stream nutrient and sediment concentrations, and impacts on soil quality and erosion.

USDA needs updated scientifically credible data on residue and tillage management, nutrient management, and conservation practices in order to quantify and assess current impacts of farming practices and to document changes. A pilot survey focused in the Chesapeake Bay Watershed was conducted for the 2011 crop year. In 2012 the target area was the Western Lake Erie Basin and the Des Moines River Watershed. In 2013 the target area was the Sacramento River, San Joaquin and Tulare Lake basin watersheds. This group of surveys is referred to as the ''*NRI Conservation Tillage and Nutrient Management Survey*'' (NRI–CTNMS). The survey questionnaires are modeled after the 2003–2006 CEAP surveys and were administered through personal interviews of farm operators by trained National Association of State Departments of Agriculture (NASDA) enumerators. Under the current approval the sample sizes averaged less than 2,500 operators per year. In 2014 NASS will be conducting the survey in the St. Francis River Basin (Arkansas, Missouri and Mississippi). Approximately 1,200 farmers will be contacted for this region. In 2015 and 2016 the CEAP program will be expanded to the US level. The target sample size will be approximately 15,000 farm operators each year.

The data that is collected by the CEAP surveys, provide conservation tillage estimates and is used to model impacts of conservation practices on the larger environment. The summarized results of the survey are available in a web-based format to agricultural producers and professionals, government officials, and the general public.

Authority: The Natural Resources Conservation Service's (NRCS's) participation in this agreement is authorized under the Soil and Water Resources Conservation Act of 1977, 16 U.S.C. 2001–2009, as amended, Economy Act U.S.C. 1535. NRCS contracted with NASS to collect and compile this data for them. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' 72 FR 33362–01, Jun. 15, 2007.

Estimate of Burden: Burden will be approximately 10 minutes for a first visit to verify the operator of the NRI point. The operators who did not screen out during the initial visit will be contacted at a later time to complete the survey. The second visit will take an estimated 60 minutes to complete the interview. (It may be possible to complete both during the same visit).

Respondents: Farmers and Ranchers.

Estimated Number of Respondents: 10,400 annually.

Frequency of Responses: Potentially, 2 times for each respondent.

Estimated Total Annual Burden: 8,941 hours (based on an overall response rate of approximately 80%).

ESTIMATED BURDEN FOR 2014–2016

Survey	Sample size	Freq	Responses				Non-response				Total burden hours
			Resp. count	Freq x count	Min./ resp.	Burden hours	Nonresp. count	Freq. x count	Min./ nonr.	Burden hours	
Year 1:											
CEAP—Identification Phase	1,200	1	960	960	10	160	240	240	2	8	168
CEAP—Survey Phase	1,000	1	800	800	60	800	200	200	2	7	807
Pre-Survey Letter and Publicity Materials	1,200	1	960	960	5	80	240	240	2	8	88
Year 2:											
CEAP—Identification Phase	15,000	1	12,000	12,000	10	2,000	3,000	3,000	2	100	2,100
CEAP—Survey Phase	12,000	1	9,600	9,600	60	9,600	2,400	2,400	2	80	9,680
Pre-Survey Letter and Publicity Materials	15,000	1	12,000	12,000	5	1,000	3,000	3,000	2	100	1,100
Year 3:											
CEAP—Identification Phase	15,000	1	12,000	12,000	10	2,000	3,000	3,000	2	100	2,100
CEAP—Survey Phase	12,000	1	9,600	9,600	60	9,600	2,400	2,400	2	80	9,680
Pre-Survey Letter and Publicity Materials	15,000	1	12,000	12,000	5	1,000	3,000	3,000	2	100	1,100
Total	31,200	.....	.....	.....	.....	26,240	.....	.....	.....	583	26,823
Annual Average	10,400	.....	.....	.....	.....	8,747	.....	.....	.....	194	8,941

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 27, 2014.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2014–05838 Filed 3–14–14; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Technical Information Service (NTIS).

Title: Limited Access Death Master File Subscriber Certification Form (Derived from the Social Security Administration Death Master File).

OMB Control Number: 0692–XXXX.

Form Number(s): NTIS FM161.

Type of Request: Emergency request (new information collection).

Number of Respondents: 700.

Average Hours per Response: 2 hours.

Burden Hours: 1,400.

Needs and Uses: The Bipartisan Budget Act of 2013 (Pub. L. 113–67) (Act) was signed into law on December 26, 2013. Section 203 of the Act prohibits disclosure of DMF information during the three-calendar-year period following death unless the person requesting the information has been certified under a program established by the Secretary of Commerce (Secretary). The Secretary has delegated the authority to carry out the DMF certification program to the Director, NTIS. The certification form was developed to collect information necessary to support the certification process for members of the public to access the DMF.

NTIS requires emergency clearance under the Paperwork Reduction Act in time to be able to implement the certification program on March 26, 2014.

Affected Public: Individuals and households.

Frequency: Annually.

Respondent's Obligation: Annually (resubmit the certification form at time of Limited DMF subscription renewal).

This information collection request may be viewed at *http://www.reginfo.gov/public.* Follow the instructions to view Department of commerce collections under review.

Written comments and recommendations for the proposed information collection should be sent by March 24, 2014 to *OIRA_Submission@omb.eop.gov* or fax no. (202) 395–5806.

Dated: March 12, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–05793 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–99–2013]

Authorization of Production Activity, Foreign-Trade Subzone 29F, Hitachi Automotive Systems Americas, Inc., (Automotive Electric-Hybrid Drive System Components), Harrodsburg, Kentucky

On November 12, 2013, the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Hitachi Automotive Systems Americas, Inc., operator of Subzone 29F, in Harrodsburg, Kentucky.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 70532–70533, 11–26–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 12, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–05828 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–23–2014]

Proposed Foreign-Trade Zone—Cameron Parish, Louisiana Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the West Cameron Port Commission to establish a foreign-trade zone within Cameron Parish, Louisiana, adjacent to the Lake Charles CBP port of entry, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 12, 2014. The applicant is authorized to make the proposal under Louisiana Revised Statues, Title 51, Sections 61–62.

The proposed zone would be the second zone for the Lake Charles Customs and Border Protection (CBP) port of entry. The existing zone is FTZ 87, Lake Charles (Grantee: Lake Charles Harbor & Terminal District, Board Order 217, July 22, 1983).

The applicant's proposed service area under the ASF would be Wards 3, 4, 5 and 6 of Cameron Parish. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Lake Charles CBP port of entry.

The proposed zone would include one initial ''usage-driven'' site: Proposed Site 1 (1,049 acres)—at the Cheniere Sabine Pass LNG Terminal, 9243 Gulf Beach Highway, Cameron.

The application indicates a need for zone services in Cameron Parish, Louisiana. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 16, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 2, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: March 12, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–05820 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China; Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on uncovered innerspring units from the People's Republic of China (''PRC''). The period of review is February 1, 2012, through January 31, 2013. The review covers the following exporters of subject merchandise: Goldon Bedding Manufacturing (M) Sdn Bhd (''Goldon'') [1] and Ta Cheng Coconut Knitting Company Ltd. (''Ta Cheng''). We preliminarily determine that Goldon and Ta Cheng, two market economy exporters, failed to cooperate to the best of their abilities and are, therefore, applying adverse facts available (''AFA'') to Goldon's and Ta Cheng's PRC-origin merchandise. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

[1] Based on Petitioner's February 28, 2013, request for review, the Department initiated this review with respect to Goldon Bedding Manufacturing Sdn. Bhd. *See* Letter from Petitioner regarding Request for Antidumping Duty Administrative Review Duty Order on Uncovered Innerspring Units from the People's Republic of China dated February 28, 2013; *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 19197, 19209 (March 29, 2013) (''*Initiation Notice*''). However, during the course of this review, Goldon represented that its official company name is Goldon Bedding Manufacturing (M) Sdn Bhd. *See* Letter from Goldon regarding Uncovered Innerspring Units from the People's Republic of China—Section A Response, dated May 27, 2013 at Attachment #3.

Tolling of Deadlines for Preliminary Results

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the preliminary results of this review is now March 18, 2014.

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. The product is currently classified under subheading 9404.29.9010 and has also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[3]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). In making these findings, we relied on facts available and, because Goldon and Ta Cheng did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available.[4]

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a dumping margin of 234.51 percent exists for Goldon and Ta Cheng for the period February 1, 2012, through January 31, 2013.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6] Case and rebuttal briefs should be filed using IA ACCESS.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[8] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[9] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to assess duties at the *ad valorem* margin rate published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department will assess duties only on Goldon's and Ta Cheng's PRC-origin merchandise.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For Goldon and Ta Cheng, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These

[2] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Oct. 18, 2013).

[3] For a complete description of the scope of the subject antidumping duty order, see Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Decision Memorandum for Preliminary Results of 2012–2013 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China'' (''*Preliminary Decision Memorandum''*), dated concurrently with these results and hereby adopted by this notice.

[4] *See* sections 776(a) and (b) of the Act.

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.303.

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.212(b)(1).

deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: March 10, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Topic discussed in the preliminary decision memorandum:

Application of Total AFA to Goldon and Ta Cheng

[FR Doc. 2014–05830 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC'') for the period of review June 1, 2012, through May 31, 2013.

DATES: *Effective Date:* March 17, 2014.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2013, based on a timely request for review by Globe Metallurgical Inc. (''Globe Metal''), the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on silicon metal from the PRC covering the period June 1, 2012, through May 31, 2013.[1] The review covers one company: Shanghai Jinneng International Trade Co., Ltd. On November 15, 2013, Globe Metal timely withdrew its request for an administrative review of the company listed above.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Accordingly, all deadlines in this segment of the proceeding have been extended by 16 days. Therefore, Globe Metal withdrew its request within the 90-day deadline and no other parties requested an administrative review of the antidumping duty order. As a result, we are rescinding the administrative review of silicon metal from the PRC for the period of review June 1, 2012, through May 31, 2013.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 10, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–05835 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011

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

SUMMARY: The Department of Commerce (Department) completed its administrative review of the countervailing duty (CVD) order on certain kitchen appliance shelving and racks from the People's Republic of China (PRC) for the period January 1, 2011, through December 31, 2011. The final net subsidy rate for New King Shan

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 46566 (August 1, 2013).

[2] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

(Zhu Hai) Co., Ltd. (NKS) is listed below in the section entitled ''Final Results of the Review.''

DATES: *Effective Date:* March 17, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Josh Morris, Office of AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 and (202) 482–1779, respectively.

Background

Following the *Preliminary Results,*[1] the Department sent a supplemental questionnaire to NKS regarding the Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for Foreign Invested Enterprises (FIEs) in Guandong Province program. NKS submitted its timely response on November 6, 2013. The Department completed a post-preliminary analysis memorandum on December 17, 2013.[2] NKS submitted a case brief on December 27, 2013. SSW Holding Company, Inc. and Nashville Wire Products, Inc. (collectively ''Petitioners'') submitted a rebuttal brief on January 3, 2014.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. Since the new deadline fell on a non-business day, in accordance with the Department's practice, the revised deadline for the final results of this review was modified to March 10, 2014.

[1] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Countervailing Duty Administrative Review; 2011,* 78 FR 63166 (October 23, 2013) (*Preliminary Results*).

[2] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Thomas Gilgunn, Acting Office Director, Office I, Antidumping and Countervailing Duty Operations, from Jennifer Meek, Office I, Antidumping and Countervailing Duty Operations, regarding, ''Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Oven Racks from the People's Republic of China: Post-Preliminary Analysis Memorandum,'' (December 17, 2013).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

Scope of the Order

The scope of the order covers shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. The merchandise subject to the order is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.

A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Final Results for the Countervailing Duty Administrative Review: Kitchen Appliance Shelving and Racks from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum), and which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (Act). A full description of the methodology underlying all of the Department's conclusions, including our decision to apply facts otherwise available with an adverse inference, is presented in the Issues and Decision Memorandum.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we calculated the subsidy rate shown below for the mandatory respondent, NKS:

Producer/exporter	Net subsidy rate (%)
New King Shan (Zhu Hai) Co., Ltd.	8.52

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review, to liquidate shipments of subject merchandise by NKS entered, or withdrawn from warehouse, for consumption on or after January 1, 2011, through December 31, 2011, at the *ad valorem* assessment rate listed above.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above on shipments of subject merchandise by NKS entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 10, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum:

1. Summary
2. Period of Review
3. Scope of the Order
4. Attribution of Subsidies
5. Allocation of Subsidies
6. Subsidies Valuation Information—Benchmarks
7. Use of Facts Otherwise Available and Adverse Inferences
8. Developments Since the Preliminary Results
9. Analysis of Programs
10. Analysis of Comments
   - Comment 1: Benchmark Calculation for the Wire Rod for Less Than Adequate Remuneration (''LTAR'') Program
   - Comment 2: Inclusion of VAT in the Wire Rod for LTAR Benchmark Calculation

[FR Doc. 2014–05832 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD178

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meetings.

SUMMARY: The New England Fishery Management Council's (Council) Herring Advisory Panel and Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: These meetings will be held on Wednesday, April 2, 2014 at 9:30 a.m. and Thursday, April 3, 2014 at 9:30 a.m.

ADDRESSES:

Meeting address: These meetings will be held at the Sheraton Colonial, One Audubon Road Wakefield, MA 01880; Phone: (781) 245–9300; Fax: (781) 245–0842.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, April 2, 2014 Beginning at 9:30 a.m.

The Herring Advisory Panel will meet to review information, alternatives, and analysis in Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan (FMP); Framework 4 includes alternatives to address two disapproved elements of Amendment 5—dealer weighing/reporting provisions and management measures to address net slippage; develop recommendations for the Herring Committee and Council to consider when selecting final measures for Framework 4 and address other business, as necessary.

Thursday, April 3, 2014 Beginning at 9:30 a.m.

The Herring Oversight Committee will meet to review information, alternatives, and analysis in Framework Adjustment 4 to the Atlantic Herring FMP. They will also review and discuss Herring Advisory Panel recommendations related to Framework 4; develop recommendations for the Council to consider when selecting final measures for Framework 4 and address other business, as necessary.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 12, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–05784 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD170

Caribbean Fishery Management Council; Scoping Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) is transitioning from species specific fishery management to island-specific fisheries management for the exclusive economic zones of Puerto Rico, St. Thomas/St. John and St. Croix separately. This transition is in response to the numerous requests received by the Council to consider the differences among the islands in the U.S. Caribbean. These differences include preference for certain species of fish, ways in which fish species are harvested and other cultural and socio economic factors such as market availability of importance in managing fisheries. The scoping document includes actions and alternatives for each island to make changes to the existing fishery management units by including or excluding species, establish or modify management reference points to determine the status of the stocks, and identify and describe essential fish habitat for any new species considered for federal management. These actions and alternatives are presented for each island specific fishery management plan in the scoping document that is available at the Council's Web page: *www.caribbeanfmc.com*.

Puerto Rico FMP

Action 1. Identify fishery management units (FMUs) to be included in the Puerto Rico Fishery Management Plan (FMP).

Alternative 1. No action. The Puerto Rico FMP is composed of all species within the FMUs historically managed under the Spiny Lobster FMP, Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP.

Alternative 2. Include in the Puerto Rico FMP species with available landings information from the Southeast Fisheries Science Center. In addition, prohibited harvest species in the current Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 3. Include in the Puerto Rico FMP only those species with annual average landings equal to or greater than a certain number of pounds (X pounds) yet to be determined. In addition, prohibited harvest species in the current Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 4. Include species in the Puerto Rico FMP that meet a predetermined set of criteria established in consultation with the Southeast Fisheries Science Center and the Caribbean Council Scientific and Statistical Committee.

Action 2. Establish management reference points for FMUs in the Puerto Rico Fishery Management Plan (FMP).

Alternative 1. No action. Retain the existing management reference points or proxies for FMUs currently managed by the Council.

Alternative 2. Revise existing management reference points or proxies for FMUs managed by the Council.

Alternative 3. Establish management reference points or proxies for new species in the Puerto Rico FMP.

Action 3. Identify/describe essential fish habitat (EFH) for new species in the Puerto Rico FMP.

Alternative 1. No Action. Do not identify essential fish habitat for new species added to the Puerto Rico FMP.

Alternative 2. Describe and identify EFH according to functional relationships between life history stages of federally managed species and U.S. Caribbean marine and estuarine habitats.

Alternative 3. Designate habitat areas of particular concern in the Puerto Rico FMPs based on confirmed spawning locations and on areas or sites identified as having particular ecological importance to managed species.

St.Thomas/St. John FMP

Action 1. Identify fishery management units (FMUs) to be included in the St. Thomas/St. John Fishery Management Plan (FMP).

Alternative 1. No action. The St. Thomas/St. John FMP is composed of all species within the FMUs historically managed under the Spiny Lobster FMP, Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP.

Alternative 2. Include in the St. Thomas/St. John FMP species with available landings information from the Southeast Fisheries Science Center. In addition, prohibited harvest species in the current Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 3. Include in the St. Thomas/St. John FMP only those species with annual average landings equal to or greater than a certain number of pounds (X pounds) yet to be determined. In addition, prohibited harvest species in the current Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 4. Include species in the St. Thomas/St. John FMP that meet a predetermined set of criteria established in consultation with the Southeast Fisheries Science Center and the Caribbean Council Scientific and Statistical Committee.

Action 2. Establish management reference points for FMUs in the St. Thomas/St. John Fishery Management Plan (FMP).

Alternative 1. No action. Retain the existing management reference points or proxies for FMUs currently managed by the Council.

Alternative 2. Revise existing management reference points or proxies for FMUs managed by the Council.

Alternative 3. Establish management reference points or proxies for new species added to the St. Thomas/St. John FMP.

Action 3. Identify/describe essential fish habitat (EFH) for new species in the St. Thomas/St. John FMP.

Alternative 1. No Action. Do not identify essential fish habitat for new species added to the St. Thomas/St. John FMP.

Alternative 2. Describe and identify EFH according to functional relationships between life history stages of federally managed species and U.S. Caribbean marine and estuarine habitats.

Alternative 3. Designate habitat areas of particular concern in the St. Thomas/St. John FMPs based on confirmed spawning locations and on areas or sites identified as having particular ecological importance to managed species.

St. Croix FMP

Action 1. Identify fishery management units (FMUs) to be included in the St. Croix Fishery Management Plan (FMP).

Alternative 1. No action. The St. Croix FMP is composed of all species within the FMUs historically managed under the Spiny Lobster FMP, Reef Fish FMP, Queen Conch FMP, and the Corals and Reef Associated Plants and Invertebrates FMP.

Alternative 2. Include in the St. Croix FMP species with available landings information from the Southeast Fisheries Science Center. In addition, prohibited harvest species in the Reef Fish FMP, and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 3. Include in the St. Croix FMP only those species with annual average landings equal to or greater than a certain number of pounds (X pounds) yet to be determined. In addition, prohibited harvest species in the current Reef Fish FMP and the Corals and Reef Associated Plants and Invertebrates FMP will be included.

Alternative 4. Include species in the St. Croix FMP that meet a predetermined set of criteria established in consultation with the Southeast Fisheries Science Center and the Caribbean Council Scientific and Statistical Committee

Action 2. Establish management reference points for FMUs in the St. Croix Fishery Management Plan (FMP).

Alternative 1. No action. Retain the existing management reference points or proxies for FMUs currently managed by the Council.

Alternative 2. Revise existing management reference points or proxies for FMUs managed by the Council.

Alternative 3. Establish management reference points or proxies for new species added to the St. Croix FMP.

Action 3. Identify/describe essential fish habitat (EFH) for new species in the St. Croix FMP.

Alternative 1. No Action. Do not identify essential fish habitat for new species added to the St. Croix FMP.

Alternative 2. Describe and identify EFH according to functional relationships between life history stages of federally managed species and U.S. Caribbean marine and estuarine habitats.

Alternative 3. Designate habitat areas of particular concern in the St. Croix FMPs based on confirmed spawning locations and on areas or sites identified as having particular ecological importance to managed species.

Dates and Addresses:

In Puerto Rico

April 7, 2014—7 p.m.–10 p.m.—Parador and Restaurant El Buen Café, #381, Rd. #2, Hatillo, Puerto Rico.

April 8, 2014—7 p.m.–10 p.m.—Mayaguez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico.

April 9, 2014—7 p.m.–10 p.m.—Asociación de Pescadores de Playa Húcares, Carr. #3, Km. 65.9, Naguabo, Puerto Rico.

April 10, 2014—7 p.m.–10 p.m.—DoubleTree Hilton Hotel, De Diego Avenue, San Juan, Puerto Rico.

April 14, 2014—7 p.m.–10 p.m.—Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

In the U.S. Virgin Islands

April 7, 2014—7 p.m.–10 p.m.—Windward Passage Hotel, Veterans Drive, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

April 8, 2014—7 p.m.–10 p.m.—The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will hold scoping meetings to receive public input on the management options mentioned above. The complete document is available at: *www.caribbeanfmc.com* or you may contact Ms. Livia Montalvo at *livia_montalvo_cfmc@yahoo.com*, or the Council office at (787) 766–5926 to obtain copies.

Written comments can be sent to the Council not later than April 15th, 2014, by regular mail to the address below, or via email to *graciela_cfmc@yahoo.com*.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 12, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–05783 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0055]

Submission for OMB Review; Comment Request—Standard for the Flammability of Mattresses and Mattress Pads and Standard for the Flammability (Open Flame) of Mattress Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) announces that the CPSC has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the CPSC's Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632, and the Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR Part 1633, under OMB Control No. 3041–0014. In the **Federal Register** of December 6, 2013 (78 FR 73504), the CPSC published a notice to announce the agency's intention to seek extension of approval of this collection of information. CPSC received no comments in response to that notice. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by April 16, 2014.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov*, under Docket No. CPSC–2010–0055.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632 and the Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR Part 1633.

OMB Number: 3041–0014.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of mattresses.

Estimated Number of Respondents: 671 establishments produce mattresses; approximately 571 produce conventional mattresses; and approximately 100 establishments produce nonconventional mattresses.

Estimated Time per Response: Under 16 CFR Part 1632, 671 respondents will each spend approximately 26 hours for testing and recordkeeping annually. Under 16 CFR Part 1633, 671 respondents will spend approximately 95.6 hours for testing and recordkeeping annually. (Pooling among establishments or using a prototype qualification for longer than one year may reduce this estimate.)

Total Estimated Annual Burden: 80,923 annual burden hours (671 establishments × 26 hours) + (671 establishments × 94.6 hours).

General Description of Collection: The Commission issued flammability standards for mattresses under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632, and the Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR Part 1633. The regulation at 16 CFR Part 1632 prescribes requirements for testing prototype designs of mattresses and mattress pads to assess ignition resistance to smoldering cigarettes. The standard requires manufacturers to maintain records concerning the mattress or mattress pad prototype, testing results, and substitute materials. The regulation at 16 CFR Part 1633 establishes requirements to test mattress prototypes using a flaming ignition source (a pair of propane burners) that represents burning bedclothes. The standard requires manufacturers to maintain certain records to document compliance with the standard, including records concerning prototype testing, pooling, and confirmation testing, and quality assurance procedures and any associated testing for open-flame ignition sources.

Dated: March 12, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–05761 Filed 3–14–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0177]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Physical Access Control System—Honeywell; DLA Form 1815; OMB Control Number 0704–XXXX.

Type of Request: New Collection.

Number of Respondents: 25,000.

Responses per Respondent: 1.

Annual Responses: 25,000.

Average Burden per Response: 15 Minutes.

Annual Burden Hours: 6,250 hours.

Needs and Uses: The information collection requirement is needed to obtain the necessary data to verify eligibility for a Department of Defense physical access card for personnel who are not entitled to a Common Access Card or other approved DoD identification card. The information is used to establish eligibility for the physical access to the DLA Aviation Installation, detect fraudulent identification cards, provide physical access and population demographics reports, provide law enforcement data, and in some cases, provide antiterrorism screening.

Affected Public: Individuals and Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefit.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–05812 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–HA–0025]

Proposed Collection; Comment Request

AGENCY: Defense Health Agency (DHA), Defense Health Clinical Systems, Data Sharing Program Office, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Health Agency, Defense Health Clinical Systems, Data Sharing Program Office, 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 May 16, 2014.

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:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Information Management System (DHIMS), ATTN: Alvaro Rodriguez, 5109 Leesburg Pike, Skyline 6, Suite 508, Falls Church, VA 22041, or call DHIMS, at 703–882–3867.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Health Artifact and Image Management Solution (HAIMS); 0720–TBD.

Needs and Uses: The information collection requirement is necessary for HAIMS to provide the departments of Defense and Veterans Affairs health care providers with global visibility and access to artifacts (documents) and images generated during the health care delivery process. HAIMS will provide a single enterprise-wide data sharing capability for all types of artifacts and images (also known as A&I), including radiographs, clinical photographs, electrocardiographs, waveforms, audio files, video and scanned documents.

Affected Public: Individuals and Households; specifically, beneficiaries with access to the Military Healthcare system.

Annual Burden Hours: 500,000.

Number of Respondents: 6,666,667.

Responses per Respondent: 1.5.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

The Health Artifact and Image Management Solution (HAIMS) will provide the departments of Defense and Veterans Affairs health care providers with global visibility and access to artifacts (documents) and images generated during the health care delivery process. HAIMS, a Wounded Warrior strategic project, will provide a single enterprise-wide data sharing capability for all types of artifacts and images (also known as A&I), including radiographs, clinical photographs, electrocardiographs, waveforms, audio files, video and scanned documents.

HAIMS will provide an enterprise solution utilizing a Service Oriented Architecture (SOA) based application

with a federated infrastructure. The required solution to satisfy the scope of HAIMS will consist of industry standard COTS, as well as government off the shelf (GOTS). The expected business outcomes have been defined and constraints/dependencies have been identified in satisfying the functional, technical and system requirements to develop, field and support HAIMS throughout the life cycle.

HAIMS interfaces with external repositories to register and access patient A&I. Patient demographic information from the Clinical Data Repository (CDR) is used to associate A&I with the patient. Another method of collecting data is through bulk scanning of patient artifacts into HAIMS. The user will first select the patient for which the artifact is associated with, and then enters in relevant metadata of the artifacts.

The information in HAIMS is sensitive; therefore, it contains built-in safeguards to limit access and visibility of this information. HAIMS uses role-based security so a user sees only the information for which permission has been granted. It uses encryption security for transactions. It is DIACAP certified having been subjected to and passed thorough security testing and evaluation by independent parties. It meets safeguards specified by the Privacy Act of 1974 in that it maintains a published Department of Defense (DoD) Privacy Impact Assessment and System of Record covering Active Duty Military, Reserve, National Guard, and government civilian employees, to include non-appropriated fund employees and foreign nationals, DoD contractors, and volunteers. HAIMS servers are hosted at Military Treatment Facilities (MTFs) and physically secured by the Services and within the MHS enclave, Enterprise Infrastructure maintains information security.

Dated: March 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–05777 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0178]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Physical Access Control System—LENEL; DLA Form 1815, DSCC 2310–1, DSCC 2310–2, DSCC 2313; OMB Control Number 0704–XXXX.

Type of Request: New Collection.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 15 Minutes.

Annual Burden Hours: 15,000 hours.

Needs and Uses: The information collection requirement is needed to obtain the necessary data to verify eligibility for a Department of Defense physical access card for personnel who are not entitled to a Common Access Card or other approved DoD identification card. The information is used to establish eligibility for the physical access to the DLA Distribution San Joaquin, DLA Distribution Susquehanna, or DLA Land and Maritime installations or facilities, detect fraudulent identification cards, provide physical access and population demographics reports, provide law enforcement data, and in some cases, provide antiterrorism screening.

Affected Public: Individuals and Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefit.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–05813 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–76]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–76 with attached transmittal, and policy justification.

Dated: March 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 11 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-76, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $100 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 13–76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Pakistan

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million.
Other	$100 million.
TOTAL	$100 million.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* C–130B/E avionics upgrades, engine management and mechanical upgrades, cargo delivery system installation, and replacement of outer wing sets on six aircraft. Also included are spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (GAH)

(v) *Prior Related Cases, if any:* N/A

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 11 March 2014

* As defined in Section 47(6) of the Arms Export

POLICY JUSTIFICATION

Pakistan—C–130 Fleet Upgrade Program

The Government of Pakistan has requested a possible sale of C–130B/E avionics upgrades, engine management and mechanical upgrades, cargo delivery system installation, and replacement of outer wing sets on six aircraft. Also included are spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $100 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO ally which has been, and continues to be, an important force for regional stability and U.S. national security goals in the region.

The proposed sale will facilitate the continued operation of the Pakistan's Air Force C–130 fleet (five C–130B and eleven C–130E models) for counter-insurgency/counter-terrorism flights; regional humanitarian operations; troop transport; and Intelligence, Surveillance, and Reconnaissance (ISR) missions within Pakistan and in the region. The fleet is facing airworthiness and obsolescence issues, and will require upgrades and repairs for continued operation and effectiveness. The proposed modernization of the C–130 fleet should ensure continued viability for an additional 10–15 years.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor is unknown at this time and will be determined through a competitive bid process. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Pakistan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–05781 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Independent Review Panel on Military Medical Construction Standards; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Independent Review Panel on Military Medical Construction Standards (''the Panel''). This meeting is open to the public.

DATES:

Wednesday, April 2, 2014

7:30 a.m.–8:30 a.m. (Administrative Working Meeting)
8:30 a.m.–12:00 p.m. (Open Session)
12:00 p.m.–1:00 p.m. (Administrative Working Meeting)
1:00 p.m.–4:30 p.m. (Open Session)

Thursday, April 3, 2014

8:15 a.m.–4:45 p.m. (Administrative Working Meeting)

Friday, April 4, 2014

8:15 a.m.–11:00 a.m. (Administrative Working Meeting)

ADDRESSES: Hyatt House Hotel, 8295 Glass Alley, Fairfax, VA 22031.

FOR FURTHER INFORMATION CONTACT: The Director is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *christine.bader@dha.mil,* (703) 681–6653, Fax: (703) 681–9539. For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *kendal.brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting

At this meeting, the Panel will address the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year 2011 (Pub. L. 111–383), Section 2852(b) requirement to provide the Secretary of Defense independent advice and recommendations regarding a construction standard for military medical centers to provide a single standard of care, as set forth in this notice:

a. Reviewing the unified military medical construction standards to determine the standards consistency with industry practices and benchmarks for world class medical construction;

b. Reviewing ongoing construction programs within the DoD to ensure medical construction standards are uniformly applied across applicable military centers;

c. Assessing the DoD approach to planning and programming facility improvements with specific emphasis on facility selection criteria and proportional assessment system; and facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the Military Departments;

d. Assessing whether the Comprehensive Master Plan for the National Capital Region Medical (''the Master Plan''), dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Pub. L. 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the Master Plan result in world class military medical centers in the National Capital Region; and

e. Making recommendations regarding any adjustments of the Master Plan that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the Panel meeting is open to the public from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m. on April 2, 2014. On April 2, 2014, the Panel will receive briefings from the Department to include an overview of the unified military construction standards and ongoing construction programs and the Military Health System Dashboard. Additionally, the Panel will have discussions with Senior Leadership.

Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the April 2, 2014 meeting, as well as any other materials presented in the meeting, may be obtained at the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is

open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Wednesday, March 26, 2014, to register. Public attendees should arrive at the Hyatt House entrance with sufficient time to properly sign in no later than 8:15 a.m. on April 2.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the Panel may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the Panel may do so by submitting a written statement to the Director (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the Director may choose to postpone consideration of the statement until the next open meeting.

The Director will review all timely submissions with the Panel Chairperson and ensure they are provided to members of the Panel before the meeting that is subject to this notice. After reviewing the written comments, the President and the Director may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The Director, in consultation with the Panel Chairperson, may allot time for members of the public to present their issues for review and discussion by the Panel.

Dated: March 12, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–05769 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0037]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS E01 DoD, entitled ''DoD Federal Docket Management System (DoD FDMS)'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will permit the Department of Defense to identify individuals who have submitted comments in response to DoD rule making documents or notices so that communications or other actions, as appropriate and necessary, can be effected, such as a need to seek clarification of the comment, a direct response is warranted, and for such other needs as may be associated with the rule making or notice process.

DATES: Comments will be accepted on or before April 16, 2014. 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: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 10, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 11, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E01 DoD

SYSTEM NAME:

DoD Federal Docket Management System (DoDFDMS) (November 25, 2011, 76 FR 72689).

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''DoD Federal Docket Management System (DoD FDMS).''

SYSTEM LOCATION:

Delete entry and replace with ''Primary. U.S. Environmental Protection Agency, Research Triangle Park, Durham, NC 27711–0001.

SECONDARY LOCATIONS:

Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Washington Headquarters Services, Executive Services Directorate, Directive Division, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Defense Acquisition Regulation Systems, 241 18th Street, Suite 200A, Arlington, VA 22202–3409.

United States Army Corps of Engineers, 441 G Street, Northwest, 3G81, Washington, DC 20314–1000.

Records also may be located in a designated office of the DoD Component that is the proponent of the rule making or notice. The official mailing address

for the Component can be obtained from the DoD FDMS system manager.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 553, Rule making; 10 U.S.C. 113, Secretary of Defense; 44 U.S.C. Chapter 3501, The Paperwork Reduction Act; and OSD Administrative Instruction 102, Office of the Secretary of Defense (OSD) Federal Register (FR) System.''

* * * * *

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

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

The DoD Blanket Routine Uses set forth at the beginning of the OSD's compilation of systems of records notices may apply to this system.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Federal Docket Management System Office, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Alexandria, VA 22350–3100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Federal Docket Management System Office, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Requests should contain full name, address, and telephone number.

Note: FDMS permits an individual, as well as a member of the public, to search the public comments received by the name of the individual submitting the comment. Unless the individual submits the comment anonymously, a name search will result in the comment being displayed for view. If the comment is submitted electronically using the FDMS system, the viewed comment will not include the name of the submitter or any other identifying information about the individual except that which the submitter has opted to include as part of his or her general comments. However, a comment submitted in writing that has been scanned and uploaded into the FDMS system will display the submitter's identifying information that has been included as part of the written correspondence.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address a written request to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1150 Defense Pentagon, Washington, DC 20301–1150.

Signed, written requests should contain full name, address, and telephone number.

As appropriate, requests may be referred to the DoD Component responsible for the rule making or notice for processing.

Note: FDMS permits a member of the public to download any of the public comments received. If an individual has voluntarily furnished his or her name when submitting the comment, the individual, as well as the public, can view and download the comment by searching on the name of the individual. If the comment is submitted electronically using the FDMS system, the viewed comment will not include the name of the submitter or any other identifying information about the individual except that which the submitter has opted to include as part of his or her general comments. However, a comment submitted in writing that has been scanned and uploaded into the FDMS system will display the submitter's identifying information that has been included as part of the written correspondence.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''None.''

[FR Doc. 2014–05744 Filed 3–14–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Command and General Staff College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The CGSC Board of Visitors Subcommittee will meet from 8:30 a.m. to 4:30 p.m. on both April 28 and 29, 2014 and from 8:30 a.m. to 12:00 p.m. on April 30, 2014.

ADDRESSES: U. S. Army Command and General Staff College, Lewis and Clark Center, 100 Stimson Ave., Arnold Conference Room, Ft. Leavenworth, KS 66027.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Baumann, the Alternate Designated Federal Officer for the subcommittee, in writing at Command and General Staff College, 100 Stimson Ave., Ft. Leavenworth, KS 66027, by email at *robert.f.baumann.civ@mail.mil,* or by telephone at (913) 684–2742.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Army Education Advisory Committee is chartered to provide independent advice and recommendations to the Secretary of the Army on the educational, doctrinal, and research policies and activities of U.S. Army educational programs. The CGSC Board of Visitors subcommittee focuses primarily on CGSC. The purpose of the meeting is to provide the subcommittee with an overview of CGSC academic programs, with focus on the College's two degree-granting schools: The Command and General Staff School (CGSS) and the School of Advanced Military Studies (SAMS), in anticipation of future regional academic accreditation review in 2015–16, and to address other administrative matters. Current CGSC administrators, faculty, and students will be available to offer their perspectives.

Proposed Agenda: April 28 and 29—The subcommittee will review CGSOC and SAMS curricula, conduct a discussion of the role of critical thinking in those curricula and in preparing students for increasing responsibility in the leadership of U.S. armed forces, and complete certain administrative requirements associated with the appointment and service of individual subcommittee members. April 30—The subcommittee will discuss and compile observations pertaining the prior day's agenda items. Provisional findings and recommendations from these general subcommittee deliberations will be referred to the Army Education Advisory Committee for deliberation by

the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. Baumann, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Lewis and Clark Center is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. Baumann, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. Baumann, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Officer will review all submitted written comments or statements must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments submitted, the subcommittee Chairperson and the Alternate Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–05745 Filed 3–14–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Technology Evaluation License; EnZinc, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to EnZinc, Inc. a revocable, nonassignable, exclusive technology evaluation license to practice in the field of use of zinc-air batteries and nickel-zinc (Ni-Zn) batteries in the United States, the Government-owned inventions described in U.S. Patent Application No. 13/245,792: Dual-Function Air Cathode Nanoarchitectures for Metal-Air Batteries with Pulse-Power Capability, Navy Case No. 100,774 and U.S. Patent Application No. 13/832,576: Zinc Electrodes for Batteries, Navy Case No. 102,137 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 1, 2014.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: March 7, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–05768 Filed 3–14–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0042]

Agency Information Collection Activities; Comment Request; Protection and Advocacy of Individual Rights (PAIR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 16, 2014.

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–2014–ICCD–0042 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 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact David Jones, 202–245–7356.

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: Protection and Advocacy of Individual Rights (PAIR).

OMB Control Number: 1820–0627.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 114.

Total Estimated Number of Annual Burden Hours: 1,824.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. Rehabilitation Services Administration (RSA) uses the form to meet specific data collection requirements of Section 509 of the Rehabilitation Act of 1973, as amended (the act), and its implementing federal regulations at 34 CFR Part 381. PAIR programs must report annually using the form, which is due on or before December 30 each year. Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. These data also have been used to indicate trends in the provision of services from year-to-year.

Dated: March 11, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–05742 Filed 3–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0161]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Written Application for the Independent Living Services for Older Individuals Who Are Blind Formula Grant

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 16, 2014.

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–2013–ICCD–0161 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 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Akinola, 202–245–7303.

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: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

OMB Control Number: 1820–0660.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended (Act) to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain but for whom independent living goals are feasible.

Dated: March 10, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–05741 Filed 3–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Veterans Upward Bound Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 16, 2014.

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–2013–ICCD–0095 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 Rachael Couch, 202–502–7655.

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: Veterans Upward Bound Annual Performance Report.

OMB Control Number: 1840—NEW.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 867.

Abstract: The U.S. Department of Education is requesting a new Annual Performance Report (APR) for grants under the Veterans Upward Bound (VUB) Program. The Department is requesting a new APR because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the programs. The APRs are used to evaluate the performance of grantees prior to awarding continuation funding and to assess a grantee's prior experience at the end of each budget period.

Dated: March 12, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–05811 Filed 3–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Training for Realtime Writers Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Training for Realtime Writers Program

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116K.

DATES:

Applications Available: March 17, 2014.

Deadline for Transmittal of Applications: April 29, 2014.

Deadline for Intergovernmental Review: June 30, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The objective of this program is to provide grants to institutions of higher education (IHEs) that meet certain qualifications, to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 713 of the Communications Act of 1934 (47 U.S.C. 613) and the regulations prescribed thereunder.

Priorities: This notice contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 872(a)(3) of the Higher Education Act of 1965, as amended (HEA), (20 U.S.C. 1161s(a)(3)). The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Applicants must: (1) Demonstrate they possess the most substantial capability to increase their capacity to train realtime writers; (2) demonstrate the most promising collaboration with

educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or (3) propose the most promising and innovative approaches for initiating or expanding training or job placement assistance efforts with respect to realtime writers.

An eligible entity receiving a grant must use the grant funds for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including: (1) Recruitment; (2) the provision of scholarships (subject to the requirements in section 872(c)(2) of the HEA); (3) distance learning; (4) further developing and implementing both English and Spanish curricula to more effectively train individuals in realtime writing skills, and education in the knowledge necessary for the delivery of high quality closed captioning services; (5) mentoring students to ensure successful completion of the realtime training and providing assistance in job placement; (6) encouraging individuals with disabilities to pursue a career in realtime writing; and (7) the employment and payment of personnel for the purposes described.

Competitive Preference Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award one additional point for each competitive priority that an application meets. The maximum competitive preference points an application can receive under this competition is three.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priority or priorities they are addressing.

These priorities are:

Competitive Preference Priority 1—Improving Productivity (1 Additional Point)

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified in competitive preference priority 1 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modifications of teacher compensation systems, may not be relevant to this program. Accordingly, applicants that address this priority should respond to this competitive preference priority in a way that improves productivity in a relevant higher education context. The Secretary is particularly interested in projects that improve student outcomes at lower costs.

Applicants addressing this priority should identify the specific outcomes to be measured and demonstrate that they have the ability to collect accurate data on both project costs and desired outcomes. In addition, they should include a discussion of the expected cost-effectiveness of the practice compared with current alternative practices.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (1 Additional Point)

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success; and

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Competitive Preference Priority 3—Technology (1 Additional Point)

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Note: Projects responding to competitive preference priority 3 must incorporate ways to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials. The Department recognizes that some of the examples in the definition of student achievement may not be relevant to the Training for Realtime Writers Program. Accordingly, applicants who are writing to competitive preference priority 3 should address paragraph (a)(2) of the definition of ''student achievement,'' which defines the term in reference to alternative measures of student learning, and should address this competitive preference priority in a way that improves student achievement in a relevant higher education context.

Definitions: The following definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). These definitions apply to the competitive preference priorities in this notice.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR Part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Program Authority: 20 U.S.C. 1161s.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR Part 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,114,740.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $500,000–$557,370.

Estimated Average Size of Awards: $557,370 for the entire grant period.

Maximum Award: We will reject any application that proposes a budget exceeding $557,370 for the entire grant period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that offers a court reporting program that: (a) has a curriculum capable of training realtime writers qualified to provide captioning services; (b) is accredited by an accrediting agency or association recognized by the Secretary; and (c) is participating in student aid programs under Title IV of the HEA.

2. (a) *Cost Sharing or Matching:* This program does not require cost sharing or matching.

(b) *Supplement-Not-Supplant:* This program involves supplement-not-supplant requirements. Under section 872(c)(4) of the HEA, grant amounts awarded under this program must supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116K.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Any application addressing the competitive preference priorities must address them in the abstract and the narrative. You must limit the application narrative to no more than 15 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

Note: For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page.

- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, endnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424) and the Department of Education Supplemental Information for the SF 424 Form; the one-page Abstract; Budget Information—Non-Construction Programs (ED 524); or Part IV, the Assurances and Certifications. The page limit also does not apply to a Table of Contents, if you include one. However, the page limit does apply to all of the project narrative section in Part III.

If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 17, 2014.

Deadline for Transmittal of Applications: April 29, 2014.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 30, 2014.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Under section 872(c)(3) of the HEA, a grantee under this program may not use more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Training for Realtime Writers Program, CFDA number 84.116K, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training for Realtime Writers Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116K).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that

the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sarah T. Beaton, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street NW., Room 6154, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116K),
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116K),
550 12th Street SW., Room 7039,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or

submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Training for Realtime Writers Program: The number and percentage of participants who have completed the program who are employed as realtime writers.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sarah T. Beaton, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street NW., Room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621 or by email: *sarah.beaton@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 12, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–05825 Filed 3–14–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–038]

Petition for Waiver of Felix Storch, Inc. (FSI) From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure and Grant of Interim Waiver

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of a petition for waiver from Felix Storch, Inc. (FSI) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of certain electric refrigerators and refrigerator-freezers. FSI asks that it be permitted to use an alternate test procedure to account for the energy consumption of its specific models of its Keg Beer Coolers, Assisted

Living Refrigerator-freezers and Ultra-Compact Hotel Refrigerators in place of the currently applicable DOE test procedure. DOE solicits comments, data, and information concerning FSI's petition and the suggested alternate test procedure. Today's notice also declines to grant FSI with an interim waiver from the electric refrigerator-freezers test procedure, for the reasons described in this notice. The waiver request pertains to the basic models set forth in FSI's petition.

DATES: DOE will accept comments, data, and information with respect to the FSI Petition until April 16, 2014.

ADDRESSES: You may submit comments, identified by case number ''RF–038,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–038] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The currently applicable test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1. The test procedure that will be required for certifying that products comply with Federal standards beginning on September 15, 2014 is contained in 10 CFR part 430, subpart B, appendix A.

The regulations set forth in 10 CFR part 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure

On December 12 and 17, 2013, FSI submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendices A and A1. In its petition, FSI asserts that its products could not be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. The DOE test procedure for residential refrigeration (both the procedure that is required currently and the procedure that will be required beginning on September 15, 2014) require testing products at an ambient temperature of 90°F. DOE selected that temperature to simulate the effects of door openings and closings, which are not performed during the testing. See 10 CFR § 430.23(a)(10) (The regulation explains, ''[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70 °F (21 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings.''). FSI contends that the products addressed by its waiver petition will be sold for uses where door openings and closings are highly infrequent. As a result, in its view, testing these products in accordance with the DOE test procedure conditions would result in measurements of energy use that are unrepresentative of the actual energy use of these products under their conditions of expected use by consumers.

As an alternative, FSI submitted to DOE an alternate test procedure to account for the energy consumption of its Keg Beer Coolers, Assisted Living Refrigerator-freezers and Ultra-Compact Hotel Refrigerators. That procedure would test these units at 70°F or 72°F over a 24-hour period instead of the required 90°F ambient temperature condition. FSI believes its alternate test procedure will allow for the accurate measurement of the energy use of these products as required by the current DOE test procedure.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

FSI also requests an interim waiver from the existing DOE test procedure for the models listed in its December 12, 2013 petition. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(g).

DOE has determined that FSI's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship FSI might experience absent a favorable determination on its application for interim waiver. DOE understands, based upon FSI's petition, that absent an interim waiver, FSI's products could not be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. However, DOE has found that FSI's petition provides insufficient information for DOE to determine whether the alternative test procedure that FSI proposes to use is likely to provide a measurement of the energy use of these products that is representative of their operation under conditions of expected consumer use. Since DOE has found it unlikely that FSI's waiver petition will be granted in its current form and has determined that it is not desirable for public policy reasons to grant FSI immediate relief, DOE is declining to grant an interim waiver and is seeking additional information on the underlying basis for FSI's proposed alternative.

DOE notes that the existing test procedures, as well as recent test procedure waivers, contain a method for addressing certain types of products for which less frequent door openings occur. Specifically, the test procedure for residential freezers applies an adjustment factor to account for the relatively fewer expected door openings of upright and chest freezers, each of which has a corresponding adjustment factor for the overall energy use. (*See* appendix B to subpart B of 10 CFR part 430, section 5.2.1.) Further, DOE has also granted a test procedure waiver for a combination wine cooler-refrigerator on the basis of the manufacturer's claim that the product would be subjected to fewer door openings in typical use, which used the same adjustment factor as is applied to upright freezers. 78 FR 35894 (Sept. 17, 2013). DOE also requests comment on whether such an approach would be more appropriate for testing these models.

For the reasons stated above, before DOE will authorize the use of an alternative test procedure for testing of the specific models listed in the waiver petitions, DOE is seeking comment from interested stakeholders on whether FSI's proposed test is likely to be representative of the energy use of the products that are the subjects of the waiver petition or whether another alternative may be more appropriate.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. FSI may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Summary and Request for Comments

Through today's notice, DOE announces receipt of FSI's December 12, 2013 and December 17, 2013 petitions for waiver from the specified portions of the test procedure applicable to FSI's line of Keg Beer Coolers, Assisted Living Refrigerator-freezers and Ultra-Compact Hotel Refrigerators and declines to grant FSI an interim waiver from those same portions of the test procedure for the models specified in its December 12, 2013 request for interim waiver. The petition includes a suggested alternate test procedure to determine the energy consumption of FSI's specified refrigerator-freezers. DOE may consider including this alternate procedure in a subsequent Decision and Order. However, at this time, DOE cannot establish whether the alternative procedure proposed by FSI is an appropriate means for measuring the energy use of these products based solely on the information provided in the waiver petition.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Paul Storch, President, Summit Appliance Div., Felix Storch, Inc., 770 Garrison Ave., Bronx, NY 10474. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on March 11, 2014.

Kathleen B. Hogan,

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

December 12, 2013
Building Technologies Program
U.S. Department of Energy
Test Procedure Waiver
1000 Independence Ave. SW
Mailstop EE–2J
Washington, DC 20585–0121

RE: Petition for Waiver of Test Procedures in use currently (10 CFR § 430, subpart B, appendix A1) and proposed for September 15, 2014 (10 CFR § 430, subpart B, appendix A) pursuant to 10 CFR. § 430.27(a)(1) for Summit brand appliances as follows:

- Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M)
- Assisted Living Refrigerator-freezers (Models ALBF44, ALBF68)
- Hotel Refrigerators (Models HTL2 and HTL3)

Introduction

The Department of Energy (''DOE'') provides a waiver process for refrigeration products when ''the prescribed [10 CFR § 430, Subpart B, Appendix A1 currently and the proposed 10 CFR § 430, Subpart B, Appendix A] test procedures may evaluate [a product] . . . in a manner so unrepresentative of its true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 CFR § 430.27. This petition seeks such a waiver for the above-referenced products.

Felix Storch, Inc. (''FSI'') is a small business engaged in importing, manufacturing, and distributing appliances to niche markets in the household, commercial, hospitality, institutional, and medical community, as well as distributing household cooking and laundry appliances. Located in the South Bronx, New York, FSI employs approximately 150 individuals engaged in manufacturing, material handling, trucking,

engineering, marketing, sales, shipping, clerical services, and customer service. FSI, under the Summit brand name, imports refrigeration products from a number of factories in Europe, Mexico and Asia, as well as manufactures a number of products in New York. A significant part of FSI's business is value-added manufacturing conducted by FSI in its Bronx facility. Value-added manufacturing is the process of adding or modifying components or finishes to existing products in order to adapt these appliances for sale to special markets where few or no suitable products exist. The above-referenced models are all either built or modified in our Bronx facility.

DOE's test procedures are not appropriate for the above-referenced models because they fail to accurately reflect the actual energy consumption of the products during normal use. DOE test procedures for residential refrigeration (both the procedures in effect currently and the proposed procedures for 2014) require testing products at an ambient temperature of 90°F. DOE selected that temperature (as opposed to a more normal 70°F ambient) to simulate the effects of door openings and closings; such actions are not performed during the testing. *See* 10 CFR § 430.23(a)(10) (The regulation explains, ''[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70°F (21°C)) with door openings, by testing at 90°F (32.2°C) without door openings.'').[2] However, the above-listed FSI products will be sold for uses where door openings and closings are highly infrequent.[3] All these products will consume far less energy during actual use than is measured by the existing and proposed testing procedures.

FSI seeks a waiver for the above-references products because:

(1) Test procedures do not provide a fair and accurate representation of actual energy use;

(2) The market size for each of these products is quite small;

(3) The economic burden of complying with DOE standards in effect today, and the proposed standards for 2014, would place an undue economic burden on FSI;

(4) There is an easily substituted alternate test procedure for these models;

(5) Withdrawing these products from the marketplace would greatly limit consumer choice, adversely impact small business and, in some cases, result in compelling customers to turn to larger or less energy efficient products that increase overall energy consumption.

For these reasons, FSI respectfully requests a waiver, pursuant to 10 CFR § 430.27, of the test procedures for residential refrigerators provided in 10 CFR § 430, Subpart B, Appendix A.

1. Models for which a waiver is requested.

This waiver request applies to the following models:

- Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M)
- Assisted Living Refrigerator-freezers (Models ALBF44, ALBF68)
- Hotel Refrigerators (Models HTL2 and HTL3)

All of these models are intended for uses distinct from the typical household use whereby the doors on these products are seldom opened and closed.

2. Manufacturers of other basic models marketed in the United States are known by FSI to incorporate similar design characteristics.

Manufacturers of other basic models marketed in the United States and known to FSI that incorporate similar design characteristics are included in Attachment A.

3. Alternate test procedures are known to FSI to evaluate accurately energy consumption of the listed basic models.

FSI has extensive data that demonstrates that a single change to the test procedure will result in measuring energy consumption in a manner far more representative of actual use.

Testing the basic models listed in this petition at an ambient temperature of 70°F or 72°F, rather than 90°F will measure energy consumption in a manner significantly more representative of actual use than using the DOE prescribed test procedures, both under current standards and those proposed for implementation on September 15, 2014.

Background

DOE acknowledges in 10 CFR § 430.23(a)(10) that ''[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70°F (21°C)) with door openings, by testing at 90°F (32.2°C) without door openings.''

DOE uses 90°F as a surrogate for running tests at typical ambient temperature to simulate the impact of opening and closing refrigerator and freezer doors. This standard is incorporated into the AHAM test procedures used by DOE in both the current standards and the upcoming 2014 standards. This temperature selection is at least 30 years old and is referenced in ANSI–AHAM HRF–1 (1979).[4]

Several studies have attempted to validate this information. For example, one study showed that household refrigerators-freezers had a median of 48 fresh-food door openings and 10 freezer door openings per 24 hours.[5] A study based on this number of door openings concluded that 90°F overstated energy consumption by 8.3% to 15.9%.[6] Several other studies corroborate these results.[7] For example, a study by the Florida Solar Energy Center measured door openings and closings in two person households and found an average of 42 openings per day.[8]

A National Institute of Standards (''NIST'') study, commissioned by DOE, also demonstrated that when testing is performed at 90°F, as little as a 2 degree difference in ambient temperature can result in a dramatic difference in measured energy consumption. [9] Alan

[2] *See* 10 CFR 10 CFR § 430.23(a)(10) (identifying 70°F as being representative of typical room temperature).

[3] It is important to note that the overwhelming majority of compact appliances sold today fall into the categories of dormitory type or office type refrigerator-freezers. FSI could not find statistics on door openings for these products, but since these types of units would be shared by multiple users, it is logical to assume their use would be similar to conventional refrigerators, as opposed to the special use models in this waiver petition.

[4] *American National Standard on Household Refrigerators and Household Freezers,* ANSI/AHAM HRF–1–1979 at 51–52, *available at: https://law.resource.org/pub/us/cfr/ibr/001/aham.HRF-1.1979.pdf.*

[5] *See* Danny S. Parker & Ted C. Stedman, *Measured Electricity Savings of Refrigerator Replacement: Case Study and Analysis,* Florida Solar Energy Center FSEC–PF–239–92 (1992) (citing Chang, Y.L., and R.A. Grot. 1979. *Field performance of residential refrigerators and combination refrigerator-freezers.* NBSIR 79–1781).

[6] James Y. Kao & George E. Kelly, *Factors Affecting the Energy Consumption of Two Refrigerator-Freezers,* SA–96–7–1 at 9 *available at: http://fire.nist.gov/bfrlpubs/build96/PDF/b96070.pdf.*

[7] *See e.g.,* NIST Study (citing Alan Meier and Richard Jansky, *Field Performance of Residential Refrigerators: A Comparison with the Laboratory Test,* LBL–31795 UC 150 (May 1991) *available at: http://www.osti.gov/scitech/servlets/purl/6142295*; Meier, A., et al. 1993; The New York refrigerator monitoring project: final report. Report No. LBL–33708. Berkeley, California: Lawrence Berkeley Laboratory; KEMA–XENERGY, Inc., *Final report measurement and evaluation study of 2002 statewide residential appliance recycling program,* 8–1—8z–8 (2004); Wong, M.T., W.R. Jones, B.T. Howell, and D.L. Long. 1995. Energy consumption testing of innovative refrigerator-freezer. *ASHRAE Transactions* 101(2).)

[8] Danny S. Parker & Ted C. Stedman, *Measured Electricity Savings of Refrigerator Replacement: Case Study and Analysis,* Florida Solar Energy Center FSEC–PF–239–92 (1992).

[9] David A. Yashar, *Repeatability of Energy Consumption Test Results for Compact Refrigerators,* U.S. Dept. of Commerce, Technology Administration National Institute of Standards and Technology at 7–8, 14 (September 2002), *available at: http://fire.nist.gov/bfrlpubs/build00/PDF/b00055.pdf.*

Meier, an associate American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') member, conducted a more exhaustive study of this correlation and found that for two groups of refrigerators extensively monitored, actual energy use averaged 13% and 15% less than the results from the yellow Energy Guide (which is based on AHAM procedures).[10] Mr. Meier reported that families typically open and close the doors of their refrigerators an average of 50 times daily. The study observed, ''[r]elatively modest ambient temperature variations led to 50% changes in energy use.''

Another study by P.K. Bansal, also an ASHRAE member, states that,

Elevated ambient temperatures used in most test procedures crudely simulate the heat loads from door openings. . . . This process fails to produce satisfactory results that could be representative of an in-situ real world refrigerator performance [11]

Even a 2010 study by the Energy Analysis Department of the Lawrence Berkeley Laboratory, CA, supported by DOE, stated, ''[i]n many cases the test procedures do not reflect field usage[.]'' [12]

These studies provide clear evidence that when refrigerator doors are opened infrequently, the AHAM procedures using 90°F as the ambient temperature will overstate energy consumption.

Most of these studies were done on typical household refrigerator-freezers. FSI found no comparable data for compact refrigerators or, more specifically, on any of the type of products for which a waiver is sought in this petition. Indeed, DOE's own Technical Support Document, acknowledged that:

''DOE found no data on the typical field energy consumption of compact refrigeration products. It therefore assumed that the average field energy use of compact refrigerators and freezers of a given size the same as the maximum energy use allowed by the DOE standard as measured in the DOE test procedure. In effect, DOE assumed that variation in the field energy use of compact appliances is a function solely of volume.'' [13]

The approximation ignores the significantly important variable of the number of door openings and closings which greatly differs between a full size refrigerator used by a family and a specialty compact refrigerator used in a secondary application.

FSI performed tests on four representative models of refrigerators and beer dispensers., running tests at average 72°F (room) temperature and at 90°F. For one set of tests FSI opened and closed the doors of each unit six times per test, which exceeds the frequency of typical door openings and closings for these models. The second set of tests was conducted with doors remaining closed throughout the test. These tests consistently showed that all units at average 72°F (room temperature) used over 40% less energy than when run at 90°F. The tests with doors closed had a weighted average of 48% lower energy consumption than at 90°F, and tests with door openings had a weighted average of 46% lower energy consumption. Door openings consistent with actual use, or tests without door openings, did not change the overall results or the conclusions.

A summary of this data is presented in the following tables.

TABLE 1—TESTS WITH APPROPRIATE DOOR OPENINGS AND CLOSINGS

Type	No. tests	Energy use at 90°F	Energy use at ambient	Percent decrease
			With doors opened/closed	
Beer Dispenser	2	1.16 kWh/day	0.68 kWh/day	41
Hotel Refrigerator	4	1.04 kWh/day	0.59 kWh/day	43
Assisted Living Unit 1	3	0.91 kWh/day	0.51 kWh/day	44
Assisted Living Unit 2	6	1.10 kWh/day	0.55 kWh/day	50

TABLE 2—TESTS WITH DOORS CLOSED

Type	No. tests	Energy use at 90°F kWh/day	Energy use at ambient	Percent decrease
			(no door openings)	
Beer Dispenser	6	1.16 kWh/day	0.65 kWh/day	44
Hotel Refrigerator	5	1.04 kWh/day	0.55 kWh/day	47
Assisted Living Unit 1	6	0.91 kWh/day	0.49 kWh/day	46
Assisted Living Unit 2	8	1.10 kWh/day	0.52 kWh/day	53

Discussion of Door Openings and Closings for the Models in This Waiver Petition

The units in this waiver application do not conform to the same usage as typical household full-size refrigerators: the doors on all of these basic units are opened and closed significantly less frequently than typical household refrigeration equipment. The units in this waiver petition also differ from the majority of compact refrigerator-freezers sold for dormitory or office use, which are typically shared by a number of users.

1. Keg Beer Coolers [Models SBC590, SBC590OS, and SBC635M]

Beer coolers, by their nature, have their doors opened and closed only when a keg needs to be changed. Depending on usage, this may be once weekly, once monthly, or even less frequently. Beer in kegs is always

[10] Alan K. Meier, *Field performance of residential refrigerators,* ASHRAE Journal 36–40 (August 1999).

[11] P.K. Bansal, *Studies on algorithm development for energy performance testing: study 2—study of algorithms for domestic refrigeration appliances,* APEC#201–RE–01.11 at 19 (2001).

[12] Jim Lutz, et al. *How to make appliance standards work: improving the energy and water efficiency test procedures,* Ernest Orlando Lawrence Berkeley National Laboratory for Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Technology, State and Community Programs, of the U.S. Department of Energy, LBNL#4961E at 1 (2010).

[13] U.S. Dept. of Energy, *Preliminary Technical Support Document: Energy Efficiency Program for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers* at 7–38 (Nov. 2009), *available at: http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ref_frz_prenopr_prelim_tsd.pdf.*

provided in a chilled state, so in essence the beer cooler is not working to bring contents to the design temperature, but is only maintaining steady state conditions. The products in this waiver petition do not have shelves and are designed to store beer kegs only. Furthermore, use and care guides normally advise to turn off the electricity to the beer cooler while changing the keg, for both safety and energy conservation.

2. Assisted Living Refrigerators [Models ALBF44, ALBF68]

Refrigerators whose primary market is assisted living centers generally do not serve as a primary refrigerator.[14] These centers typically provide residents with three full meals a day, along with snacks during morning, afternoon, and evening activities. As such, these units serve as secondary storage that is opened and closed less frequently than primary household refrigerators. A limited survey of residents in two of these facilities done by FSI employees showed that fresh food doors were opened an average of 4 times daily, and freezer doors less than once. The refrigerators sold by FSI that are used in these assisted living studio apartments also differ from typical household or dormitory type refrigerators in design. They are usually frost free or partial automatic defrost for the convenience of an elderly population (compared to typical ''dormitory'' refrigerators that are usually manual defrost). Moreover, they are usually only 4 to 6 cubic feet compared to the 15 to 25 cubic feet typically found in homes or apartments.

3. Ultra-Compact Hotel Refrigerators [Models HTL2 and HTL3]

FSI's proprietary ultra-compact refrigerators (with compressors) for hotel rooms are planned for introduction in early 2014 and are designed for guest convenience.[15] These refrigerators are priced at a premium, very compact, and normally would be marketed only to upscale hotels. FSI estimates that guests will open and close the door to these units infrequently, if at all, since hotel rooms are generally occupied primarily during sleeping hours and meals are ordinarily eaten outside the room, or delivered by room service.[16] In addition, these units will not be in use when the hotel rooms are vacant.

As demonstrated above, testing the basic models in this waiver petition under the current and proposed test procedures would produce results that are ''unrepresentative of its true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 C.F.R. § 430.27.

Based on the information presented, FSI proposes the following modifications be made to the DOE test procedures for the models named in this petition:

1. Beer dispensers (Models SBC590, SBC590OS and SBC635M); be tested at an ambient temperature of 70°F (per DOE's estimate of approximately 70°F as typical room-temperature) with the doors closed;

2. Hotel and assisting living refrigerators (Models ALBF44, ALBF68, ALBF68, HTL2 and HTL3) be tested at 72°F to account for the very small number of daily door openings (where 2°F is 10% of the difference between 70°F and 90°F and door openings of these products groups are no more than 10% of the typical household refrigerators);

3. The units be tested for 24 continuous hours after stabilization to account for any timers used in the assisted living and hotel refrigerators; and

4. All other test procedures are conducted in accordance with AHAM and DOE test procedures for residential refrigerators.

Additional Reasons in Support of Granting This Waiver

FSI targets niche markets with many models, including those referenced herein, where the overall sales volume is too limited to appeal to manufacturers driven by mass production and economies of scale. In some cases, not allowing products that address certain size or use needs to market will have the unintended consequences of substantially reducing consumer choice and driving energy consumption up through a switch to larger models.

For example, in the case of the assisted living markets, withdrawing specialty products from this small, niche market may force facilities to purchase larger refrigerators than necessary, increasing overall energy usage. The convenience and accessibility of these compact products is often more appropriate for assisted living residents. If suitably sized products are not available, facilities might be forced to remodel a kitchenette when a refrigerator needs replacing.

In the case of the hotel industry, hotels (excluding extended stay hotels or suite type hotels) often use refrigerators that are driven by an absorption cooling system or by a thermoelectric cooling system (also called heat pipe systems). These cooling systems use significantly more energy than compressor systems, but are chosen by hotels for their low noise levels. It is important to note that these basic units may not be covered products for DOE because their design does not always allow them to reach the 39°F threshold and, therefore, may not be considered a refrigerator per the statutory definition. [*See* 10 C.F.C. § 430.2 (defining an electric refrigerator as ''a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32°F (0°C) and below 39°F (3.9°C), and having a source of refrigeration requiring single phase, alternating current electric energy input only.'')]. Consequently, by excluding FSI compressor models from competing in this market, hotels will use models with absorption or thermoelectric systems which use substantially more energy than the excluded products.

Economic Burden of the Regulations on Small Business in General and FSI in Particular

Failure to grant these basic models waivers from test procedures would have severe economic consequences for FSI.

Very large, multi-national corporations dominate the appliance market, led by Whirlpool and General Electric, whose sales are in the billions of dollars. Foreign companies with appliance sales in the billions of dollars and with a large U.S. presence include Electrolux (Frigidaire), LG, Samsung, Daiwoo, Bosch, Liebherr, Miele, AGA-Marvel, Bertazoni, Smeg, Haier, and Midea. FSI cannot compete with these companies' mass markets, with huge economies of scale on production, and distribution and insignificant compliance testing costs. FSI predominantly markets specialty

[14] Assisted living facilities generally include meals as a standard feature. *See e.g.* Sunrise Senior Living, Assisted Living *available at: http://www.sunriseseniorliving.com/care-and-services/assisted-living.aspx* (''While services and amenities may very by location, Sunrise assisted senior living communities generally provide . . . [t]hree delicious, well-balanced meals served daily[.]''); Friendship Assisted Living, Amenities *available at: http://friendship.us/assisted-living/amenities-2/* (''Restaurant-style dining is available for three meals everyday[.]''); HelpGuide.org, Assisted Living Facilities, *available at: http://www.helpguide.org/elder/assisted_living_facilities.htm* (showing that assisted living facilities typically provide three meals a day).

[15] Full size refrigerators used in hotel suites with kitchenettes or extended stay hotels are not part of the waiver application.

[16] *See* American Hotel & Lodging Association, Eco-Friendly Case Studies, *available at: http://www.ahla.com/Green.aspx?id=21756* (The Radisson Hotel Cleveland decided to unplug hotel room mini-refrigerators because ''a majority of hotel guests did not use them during their stay.'').

appliances that respond to niche market demands and customer choice.

In response to DOE 2014 test procedures, FSI is working very hard to modify the vast majority of its residential refrigerator and freezer product line to comply with the new procedures. But in a number of niche markets with very small sales, the feasibility and costs of compliance are highly disproportionate for FSI to make a business case and will not result in energy savings. This results in an undue burden on FSI, for which these niche products form the nucleus of FSI's manufacturing operations and are the driver of job creation in disadvantaged economic development areas. Unlike the large companies mentioned above who can spread the cost of meeting current DOE and upcoming DOE 2014 standards and, in particular, test procedures over a base of millions, hundreds of thousands, or tens of thousands of units, a small business like FSI does not have this option.

DOE has acknowledged the difficulties faced by both small manufacturers and the compact refrigeration industry dealing with standards. FSI falls into both categories and 90% of FSI's refrigeration business is restricted to compact classes. DOE reports that compact appliances only account for 2.5% of total energy consumed by all refrigeration products.[17] FSI's assumption is that at least 75% of that small number is consumed by college dormitory/office type products, meaning that less than 1% of total refrigeration energy use is consumed by ''specialty'' compact appliances, such as those listed in this petition. FSI's market share even in these small niche markets is quite limited. The appliances in this waiver application are a negligible part of that tiny subset and any energy consumption impacts from this waiver are highly de minimis at most. DOE recognizes the limited options available to compact appliance manufacturers, ''[b]ecause of small production volumes, the impact of new standards on these manufacturers is relatively severe.'' [18] This is especially true ahead of DOE 2014 requirements, which mandate a 20% reduction of usage and few affordable alternatives for reducing energy consumption in niche appliances that meet consumer demand.

Conclusions

The waiver process clearly is intended for situations where test procedures do not provide an accurate representation of actual energy consumption. FSI has demonstrated that the test procedures specified by DOE do not provide representative measure of the basic models in this waiver application, whose doors are opened and closed significantly less than typical household use.

FSI has demonstrated that:

- The use of 90°F is designed to simulate an average of 40 to 50 door openings per day and, even at that level, may overstate energy usage;
- The models listed in this waiver application have their doors opened and closed infrequently, and certainly significantly less than the simulation average;
- An alternate test procedure is readily available consisting of testing the products at 70°F or 72°F, over a 24 hour period, and holding all other test procedures in accordance with AHAM Procedures and 10 CFR § 430, Subpart B, Appendix A and Appendix A1.
- Failure to grant this waiver will cause severe economic hardship to FSI, a small business, and likely will cause switch to higher energy consuming replacement products.

FSI respectfully requests DOE waive the test procedures for the products listed in the petition as these ''test procedures may evaluate [these product] . . . in a manner so unrepresentative of [their] true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 C.F.R. § 430.27. All of these basic units have materially different uses than the average products subject to the test procedures. The proposed alternative procedures will provide an accurate representation of actual energy use. For these reasons, FSI respectfully requests that DOE substitute our proposed test procedures and waive the test procedures at 10 CFR § 430, Subpart B, Appendix A for FSI's beer coolers, assisted living refrigerator-freezers and hotel refrigerators.

Respectfully submitted,
Paul Storch, President
Summit Appliance Div. Felix Storch, Inc.
770 Garrison Ave. Bronx, NY 10474 USA
PH. 718–893–3900
FAX: 718–842–3093

Attachment A

COMPANIES WITH PRODUCTS SIMILAR TO FSI

Automatic defrost or frost free beer coolers (excluding beer coolers that convert into refrigerators)	Refrigerators designed specifically for hotels	4 to 6 c.f. frost-free refrigerators
Nostalgia Products Group LLC 1471 Partnership Dr Green Bay, WI 54304–5685 **Sears** 5333 Beverly Road Hoffman Estates, IL 60192 **Avanti Products** 10880 NW 30th Street Miami, FL 33172 **Fisher & Paykel Appliance USA Holdings Inc.** 5900 Skylab Rd Huntington Beach, CA 92647 USA	**Minibar North America** 7340 Westmore Road Rockville, MD 20850 **Dometic Corporation** 13128 State Rt 226 Big Prairie, OH 44611	**Avanti Products** 10880 NW 30th Street Miami, FL 33172 **Absocold Corporation.** 1122 NW T Street Richmond, IN 47374

December 12, 2013

Dr. David Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

[17] *See* **Federal Register** Vol. 62 No. 81, Page 23111, April 28, 1997.

[18] *Id.*

Re: Application for Interim Waiver pursuant to 10 C.F.R. § 431.401 for basic Summit models:

- Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M)
- Assisted Living Refrigerator-freezers (Models ALBF44, ALBF68)
- Hotel Refrigerators (Models HTL2 and HTL3)

Felix Storch, Inc. (FSI) through this Application for Interim Waiver will demonstrate likely success of the petition for waiver and address what economic hardship and/or competitive disadvantage is likely to result, absent a favorable determination on the Application for Interim Waiver.

This application for interim waiver applies to the following models:

- Keg Beer Coolers (Models SBC590, SBC590OS, and SBC635M)
- Assisted Living Refrigerator-freezers (Models ALBF44, ALBF68)
- Hotel Refrigerators (Models HTL2 and HTL3)

Jointly, these models are referred to throughout as 'refrigerators'. Further information to support this application is contained in the Petition for Waiver filed simultaneously to this application.

Confidential Business information:

Felix Storch, Inc. is not asking for any part of this interim waiver request to be redacted.

Likelihood of Success on the Merits

FSI markets a wide range of refrigeration equipment for sale into specialty and niche markets. These refrigerators need to comply with energy efficiency standards issued and enforced by the Department of Energy (DOE). DOE relies on a single test procedure for all residential refrigerators and freezers. While the test procedure will change slightly on Sept. 15, 2014, the basic method of conducting the test will remain unchanged. FSI can conclusively demonstrate that for the specific products in this waiver petition, both test procedures are ''so unrepresentative of its true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' *See* 10 CFR § 430, subpart B, appendix A1, and 10 CFR § 430, subpart B, appendix A.

These test procedures will result in reported energy usage that is substantially higher than actual energy consumption and fail to represent real world operating conditions. As such, we believe that it is highly likely that we will succeed on the merits of the waiver petition. The products listed above meet DOE's intent in creating the waiver petition process and the criteria for establishing test procedures that enable DOE to evaluate products in a manner representative of true energy consumption and provide for accurate comparative data. FSI's approach to developing more representative test procedures is supported throughout the studies cited in the waiver petition and FSI in-situ testing.

Need for an interim waiver

The residential appliance business is a highly competitive business. Companies that specialize in niche products with low annual sales, cumulative and for any given product, inherently have higher unit costs for a number of reasons, including:

- The cost of manufacturing the product is high, and there is less efficiency of scale;
- The cost of marketing and distributing niche products is higher than mass market products;
- Small companies have to divide fixed overhead by relatively low unit sales.

This is exacerbated by the costs to register and comply with energy efficiency standards. When divided over only dozens or hundreds of units sold annually, testing costs can add 5% to 25% or more to a product's selling price, and could be the determinative factor between profit and loss. As a consequence, it is vitally important that energy testing be done in a manner that is representative of actual energy consumption and does not unduly drive up the costs to comply with standards that provide inaccurate test measurements.

All of the products in this interim waiver application are compact refrigeration equipment. Compact refrigerators are primarily designed for situations where there are space limitations (either height or width or depth or a combination). As such, compact appliances do not have the options to decrease energy consumption by increasing the dimensions and adding additional insulating material. Compact appliances also have far more design limitations on the size and placement of components such as evaporators, condensers, compressors and fans because there are much smaller areas to work in.

Failure to obtain an interim waiver in a timely manner will create severe economic hardship to FSI. Products in this waiver request will all serve markets that have fewer choices than mainstream markets, which all offer increased consumer choice. None of the subject products are the most common 'dormitory' or office type compact refrigerators sold through mass market retailers.[19] Some of the products in this waiver petition will serve markets where competitive products either use technology that uses much more energy (yet are not considered ''covered'' products by DOE), or force customers to use larger refrigerators than needed, which also may use more energy than needed.

FSI is developing new products that will have many benefits and offer consumers more energy efficient choices, which will comply with DOE standard in accordance with appropriate test procedures. Yet, these products, when measured by the current and proposed DOE test procedures, will not reflect their true energy consumption. There are valid reasons why these specialty refrigerators will be used in a completely different manner than the ''typical'' residential refrigerator. When energy consumption is measured in a representative manner, all are energy efficient and will comply with applicable DOE standards. All will contribute to the value added manufacturing done in our South Bronx facility. And all are intended to meet market demand in very small markets, and offer consumers a more suitable alternative to general purpose refrigerators. FSI has demonstrated that a single change to the test procedure will produce representative data, and allow FSI to market niche products that are the most suitable for some consumer applications.

The new DOE residential standards that take effect Sept. 15, 2014 will force significant industry wide changes. Smaller companies such as FSI will be the most adversely impacted as many products that cannot meet the new standards will be withdrawn from the market. With many FSI products only selling a few hundred units annually or even fewer, the R&D and design changes needed to reduce energy consumption are cost prohibitive. Without a stream of new products to hold revenue steady, companies such as FSI will suffer severe revenue loss, employment loss and are threatened.

The failure to issue this interim waiver will not only deprive FSI of the revenue and gross profit from this group of products, but it will weaken our competitive position in the marketplace. In the waiver application, FSI identifies about a dozen major players in the appliance marketplace we compete with, all of whom have over a billion dollars in annual revenue. All but two

[19] It is important to note that the overwhelming majority of compact appliances sold today fall into the categories of dormitory type or office type refrigerator-freezers. Dorm and office refrigerators are not the subject of this petition.

are foreign companies with large manufacturing operations. All, in varying degrees, compete with FSI. On common products, FSI is at a huge competitive disadvantage given all their economies of scale. FSI competes successfully because our niche products allow us to be more valuable to our resellers, and a certain amount of ''common'' products are sold alongside. Absent the niche products, our commodity products will suffer greatly as well.

As a consequence of these circumstances, FSI would suffer serious economic hardship, and would be at a competitive disadvantage unless an interim waiver is granted for the products in this petition.

Conclusion

FSI initiated a petition for waiver for the list of specialty refrigerators that are designed to provide consumer choice in niche markets. These products differ substantially in their use from typical household or dormitory type refrigerators. The current test procedures measure energy use in a manner that is so unrepresentative of these products' true energy consumption that they provide materially inaccurate comparative data. FSI respectfully requests that you grant an interim waiver of the test procedures of 10 CFR § 430, subpart B, appendix A1 and the proposed 10 CFR § 430, subpart B, appendix A to the procedure outlined in our waiver request, so that it may avoid severe economic hardship while DOE processes the petition.

Respectfully submitted,

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December 17, 2013

Building Technologies Program
U.S. Department of Energy
Test Procedure Waiver
1000 Independence Ave., SW
Mailstop EE–2J
Washington, DC 20585–0121

RE: *Petition for Waiver of Test Procedures proposed for September 15, 2014* (10 CFR § 430, Subpart B, Appendix A) *pursuant to 10 CFR. § 430.27(a)(1) for Summit brand appliances as follows:*

- Keg Beer Coolers (Models SBC490B and SBC570R);
- Assisted Living Refrigerators (Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, and ALB753LBR); and
- Ultra-Compact, Hotel Refrigerators (Models FF28LH, FF29BKH, FFAR21H, and FFAR2H).

Introduction

The Department of Energy (''DOE'') provides a waiver process for refrigeration products when ''the prescribed [10 CFR § 430, Subpart B, Appendix A1 currently and the proposed 10 CFR § 430, Subpart B, Appendix A] test procedures may evaluate [a product] . . . in a manner so unrepresentative of its true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 CFR § 430.27. This petition seeks such a waiver for the above-referenced products from 2014 and forward test procedures for residential refrigerators provided in 10 CFR § 430, Subpart B, Appendix A.

Felix Storch, Inc. (''FSI'') is a small business engaged in importing, manufacturing, and distributing appliances to niche markets in the household, commercial, hospitality, institutional and medical community, as well as distributing household cooking and laundry appliances. Located in the South Bronx, New York, FSI employs approximately 150 individuals engaged in manufacturing, material handling, trucking, engineering, marketing, sales, shipping, clerical services and customer service. FSI, under the Summit brand name, imports refrigeration products from a number of factories in Europe, Mexico and Asia, as well as manufactures a number of products in New York. A significant part of FSI's business is value-added manufacturing conducted by FSI in its Bronx facility. Value-added manufacturing is the process of adding or modifying components or finishes to existing products in order to adapt these appliances for sale to special markets where few or no suitable products exist. The above-referenced models are all either built or modified in our Bronx facility.

DOE's test procedures are not appropriate for the above-referenced models because they fail to accurately reflect the actual energy consumption of the products during normal use. DOE test procedures for residential refrigeration (both the procedures in effect currently and the proposed procedures for 2014) require testing products at an ambient temperature of 90°F. DOE selected that temperature (as opposed to a more normal 70°F ambient) to simulate the effects of door openings and closings; such actions are not performed during the testing. *See* 10 CFR § 430.23(a)(10) (The regulation explains, ''[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70°F (21°C)) with door openings, by testing at 90°F (32.2°C) without door openings.'').[20] However, the above-listed FSI products will be sold for uses where door openings and closings are highly infrequent.[21] All these products will consume far less energy during actual use than is measured by the existing and proposed testing procedures.

FSI seeks a waiver for the above-references products because:

(1) Test procedures do not provide a fair and accurate representation of actual energy use;

(2) The market size for each of these products is quite small;

(3) The economic burden of complying with DOE standards in effect today, and the proposed standards for 2014, would place an undue economic burden on FSI;

(4) There is an easily substituted alternate test procedure for these models;

(5) Withdrawing these products from the marketplace would greatly limit consumer choice, adversely impact small business and, in some cases, result in compelling customers to turn to larger or less energy efficient products that increase overall energy consumption.

For these reasons, FSI respectfully requests a waiver, pursuant to 10 C.F.R. § 430.27, of the test procedures for residential refrigerators provided in 10 CFR § 430, Subpart B, Appendix A.

1. Models for which a waiver is requested.

This waiver request applies to the following models:

- Keg Beer Coolers (Models SBC490B; SBC570R);
- Assisted Living Refrigerators: (Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, and ALB753LBR);
- Ultra-Compact, Hotel Refrigerators (Models FF28LH, FF29BKH, FFAR21H, and FFAR2H).

All of these models are intended for uses distinct from the typical household use whereby the doors on these products are seldom opened and closed.

[20] *See* 10 CFR 10 CFR § 430.23(a)(10) (identifying 70°F as being representative of typical room temperature).

[21] It is important to note that the overwhelming majority of compact appliances sold today fall into the categories of dormitory type or office type refrigerator-freezers. FSI could not find statistics on door openings for these products, but since these types of units would be shared by multiple users, it is logical to assume their use would be similar to conventional refrigerators, as opposed to the special use models in this waiver petition.

2. Manufacturers of other basic models marketed in the United States are known by FSI to incorporate similar design characteristics.

Manufacturers of other basic models marketed in the United States and known to FSI that incorporate similar design characteristics are included in Attachment A.

3. Alternate test procedures are known to FSI to evaluate accurately energy consumption of the listed basic models.

FSI has extensive data that demonstrates that a single change to the test procedure will result in measuring energy consumption in a manner far more representative of actual use.

Testing the basic models listed in this petition at an ambient temperature of 70°F or 72°F, rather than 90°F will measure energy consumption in a manner significantly more representative of actual use than using the DOE prescribed test procedures, both under current standards and those proposed for implementation on September 15, 2014.

Background

DOE acknowledges in 10 CFR § 430.23(a)(10) that ''[t]he intent of the energy test procedure is to simulate typical room conditions (approximately 70°F (21°C)) with door openings, by testing at 90°F (32.2°C) without door openings.''

DOE uses 90°F as a surrogate for running tests at typical ambient temperature to simulate the impact of opening and closing refrigerator and freezer doors. This standard is incorporated into the AHAM test procedures used by DOE in both the current standards and the upcoming 2014 standards. This temperature selection is at least 30 years old and is referenced in ANSI–AHAM HRF–1 (1979).[22]

Several studies have attempted to validate this information. For example, one study showed that household refrigerators-freezers had a median of 48 fresh-food door openings and 10 freezer door openings per 24 hours.[23] A study based on this number of door openings concluded that 90°F overstated energy consumption by 8.3% to 15.9%.[24] Several other studies corroborate these results.[25] For example, a study by the Florida Solar Energy Center measured door openings and closings in two person households and found an average of 42 openings per day. [26]

A National Institute of Standards (''NIST'') study, commissioned by DOE, also demonstrated that when testing is performed at 90°F, as little as a 2 degree difference in ambient temperature can result in a dramatic difference in measured energy consumption.[27] Alan Meier, an associate American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') member, conducted a more exhaustive study of this correlation and found that for two groups of refrigerators extensively monitored, actual energy use averaged 13% and 15% less than the results from the yellow Energy Guide (which is based on AHAM procedures).[28] Mr. Meier reported that families typically open and close the doors of their refrigerators an average of 50 times daily. The study observed, ''[r]elatively modest ambient temperature variations led to 50% changes in energy use.''

Another study by P.K. Bansal, also an ASHRAE member, states that,

> Elevated ambient temperatures used in most test procedures crudely simulate the heat loads from door openings. . . . This process fails to produce satisfactory results that could be representative of an in-situ real world refrigerator performance [29]

Even a 2010 study by the Energy Analysis Department of the Lawrence Berkeley Laboratory, CA, supported by DOE, stated, ''[i]n many cases the test procedures do not reflect field usage[.]'' [30]

These studies provide clear evidence that when refrigerator doors are opened infrequently, the AHAM procedures using 90°F as the ambient temperature will overstate energy consumption.

All of these studies were done on typical household refrigerator-freezers. FSI found no comparable data for compact refrigerators or, more specifically, on any of the type of products for which a waiver is sought in this petition. Indeed, DOE's own Technical Support Document, acknowledged that:

> ''DOE found no data on the typical field energy consumption of compact refrigeration products. It therefore assumed that the average field energy use of compact refrigerators and freezers of a given size is the same as the maximum energy use allowed by the DOE standard as measured in the DOE test procedure. In effect, DOE assumed that variation in the field energy use of compact appliances is a function solely of volume''.[31]

The approximation ignores the significantly important variable of the number of door openings and closings which greatly differs between a full size refrigerator used by a family and a specialty compact refrigerator used in a secondary application.

FSI performed tests on four representative models of refrigerators and beer dispensers, running tests at average 72°F (room) temperature and at 90°F. For one set of tests FSI opened and closed the doors of each unit six times per test, which exceeds the frequency of typical door openings and closings for these models. The second set of tests was conducted with doors remaining closed throughout the test. These tests consistently showed that all units at average 72°F (room temperature) used over 40% less energy than when run at 90°F. The tests with doors closed had a weighted average of 48% lower energy consumption than at

[22] *American National Standard on Household Refrigerators and Household Freezers,* ANSI/AHAM HRF–1–1979 at 51–52, *available at: https://law.resource.org/pub/us/cfr/ibr/001/aham.HRF-1.1979.pdf.*

[23] *See* Danny S. Parker & Ted C. Stedman, *Measured Electricity Savings of Refrigerator Replacement: Case Study and Analysis,* Florida Solar Energy Center FSEC–PF–239–92 (1992) (citing Chang, Y.L., and R.A. Grot. 1979. *Field performance of residential refrigerators and combination refrigerator-freezers.* NBSIR 79–1781).

[24] James Y. Kao & George E. Kelly, *Factors Affecting the Energy Consumption of Two Refrigerator-Freezers,* SA–96–7–1 at 9 *available at: http://fire.nist.gov/bfrlpubs/build96/PDF/b96070.pdf.*

[25] *See e.g.,* NIST Study (citing Alan Meier and Richard Jansky, *Field Performance of Residential Refrigerators: A Comparison with the Laboratory Test,* LBL–31795 UC 150 (May 1991) *available at: http://www.osti.gov/scitech/servlets/purl/6142295*; Meier, A., et al. 1993; The New York refrigerator monitoring project: final report. Report No. LBL–33708. Berkeley, California: Lawrence Berkeley Laboratory; KEMA-XENERGY, Inc., *Final report measurement and evaluation study of 2002 statewide residential appliance recycling program,* 8–1—8–8 (2004); Wong, M.T., W.R. Jones, B.T. Howell, and D.L. Long. 1995. Energy consumption testing of innovative refrigerator-freezer. *ASHRAE Transactions* 101(2).)

[26] Danny S. Parker & Ted C. Stedman, *Measured Electricity Savings of Refrigerator Replacement: Case Study and Analysis,* Florida Solar Energy Center FSEC–PF–239–92 (1992).

[27] David A. Yashar, *Repeatability of Energy Consumption Test Results for Compact Refrigerators,* U.S. Dept. of Commerce, Technology Administration National Institute of Standards and Technology at 7–8, 14 (September 2002), *available at: http://fire.nist.gov/bfrlpubs/build00/PDF/b00055.pdf.*

[28] Alan K. Meier, *Field performance of residential refrigerators,* ASHRAE Journal 36–40 (August 1999).

[29] P.K. Bansal, *Studies on algorithm development for energy performance testing: study 2—study of algorithms for domestic refrigeration appliances,* APEC#201–RE–01.11 at 19 (2001).

[30] Jim Lutz, et al. *How to make appliance standards work: improving the energy and water efficiency test procedures,* Ernest Orlando Lawrence Berkeley National Laboratory for Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Technology, State and Community Programs, of the U.S. Department of Energy, LBNL#4961E at 1 (2010).

[31] U.S. Dept. of Energy, *Preliminary Technical Support Document: Energy Efficiency Program for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers* at 7–38 (Nov. 2009), *available at: http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ref_frz_prenopr_prelim_tsd.pdf* .

90°F, and tests with door openings had a weighted average of 46% lower energy consumption. Door openings consistent with actual use, or tests without door openings, did not change the overall results or the conclusions.

A summary of this data is presented in the following tables.

TABLE 1—TESTS WITH APPROPRIATE DOOR OPENINGS AND CLOSINGS

Type	No. tests	Energy use at 90°F	Energy use at ambient	Percent decrease
			With doors opened/closed	
Beer Dispenser	2	1.16 kWh/day	0.68 kWh/day	41
Hotel Refrigerator	4	1.04 kWh/day	0.59 kWh/day	43
Assisted Living Unit 1	3	0.91 kWh/day	0.51 kWh/day	44
Assisted Living Unit 2	6	1.10 kWh/day	0.55 kWh/day	50

TABLE 2—TESTS WITH DOORS CLOSED

Type	No. tests	Energy use at 90°F kWh/day	Energy use at ambient	Percent decrease
			(no door openings)	
Beer Dispenser	6	1.16 kWh/day	0.65 kWh/day	44
Hotel Refrigerator	5	1.04 kWh/day	0.55 kWh/day	47
Assisted Living Unit 1	6	0.91 kWh/day	0.49 kWh/day	46
Assisted Living Unit 2	8	1.10 kWh/day	0.52 kWh/day	53

Discussion of Door Openings and Closings for the Models in This Waiver Petition

The units in this waiver application do not conform to the same usage as typical household full-size refrigerators: The doors on all of these basic units are opened and closed significantly less frequently than typical household refrigeration equipment. The units in this waiver petition also differ from the majority of compact refrigerator-freezers sold for dormitory or office use, which are typically shared by a number of users.

1. Keg Beer Coolers [Models SBC490B and SBC570R]

Beer coolers, by their nature, have their doors opened and closed **only** when a keg needs to be changed. Depending on usage, this may be once weekly, once monthly, or even less frequently. Beer in kegs is always provided in a chilled state, so in essence the beer cooler is not working to bring contents to the design temperature, but is only maintaining steady state conditions. The products in this waiver petition do not have shelves and are designed to store beer kegs only. Furthermore, use and care guides normally advise to turn off the electricity to the beer cooler while changing the keg, for both safety and energy conservation.

2. Assisted Living Refrigerators [Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, and ALB753LBR)]

Refrigerators whose primary market is assisted living centers generally do not serve as a primary refrigerator.[32] These centers typically provide residents with three full meals a day, along with snacks during morning, afternoon, and evening activities. As such, these units serve as secondary storage that is opened and closed less frequently than primary household refrigerators. A limited survey of residents in two of these facilities done by FSI employees showed that fresh food doors were opened an average of 4 times daily, and freezer doors less than once. The refrigerators sold by FSI that are used in these assisted living studio apartments also differ from typical household or dormitory type refrigerators in design. They are usually frost free or partial automatic defrost for the convenience of an elderly population (compared to typical ''dormitory'' refrigerators that are usually manual defrost). Moreover, they are usually only 4 to 6 cubic feet compared to the 15 to 25 cubic feet typically found in homes or apartments.

3. Ultra-Compact Hotel Refrigerators [Models FF28LH, FF29BKH, FFAR21H, and FFAR2H]

FSI's proprietary ultra-compact refrigerators (with compressors) for hotel rooms are planned for introduction in early 2014 and are designed for guest convenience.[33] These refrigerators are priced at a premium, very compact, and normally would be marketed only to upscale hotels. FSI estimates that guests will open and close the door to these units infrequently, if at all, since hotel rooms are generally occupied primarily during sleeping hours and meals are ordinarily eaten outside the room, or delivered by room service.[34] In addition, these units will not be in use when the hotel rooms are vacant.

As demonstrated above, testing the basic models in this waiver petition under the current and proposed test procedures would produce results that are ''unrepresentative of its true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 CFR § 430.27.

Based on the information presented, FSI proposes the following modifications be made to the DOE test

[32] Assisted living facilities generally include meals as a standard feature. *See e.g.* Sunrise Senior Living, Assisted Living *available at: http://www.sunriseseniorliving.com/care-and-services/assisted-living.aspx* (''While services and amenities may vary by location, Sunrise assisted senior living communities generally provide . . . [t]hree delicious, well-balanced meals served daily[.]''); Friendship Assisted Living, Amenities *available at: http://friendship.us/assisted-living/amenities-2/* (''Restaurant-style dining is available for three meals every day[.]''); HelpGuide.org, Assisted Living Facilities, *available at: http://www.helpguide.org/elder/assisted_living_facilities.htm* (showing that assisted living facilities typically provide three meals a day).

[33] Full size refrigerators used in hotel suites with kitchenettes or extended stay hotels are not part of the waiver application.

[34] *See* American Hotel & Lodging Association, Eco-Friendly Case Studies, *available at: http://www.ahla.com/Green.aspx?id=21756* (The Radisson Hotel Cleveland decided to unplug hotel room mini-refrigerators because ''a majority of hotel guests did not use them during their stay.'').

procedures for the models named in this petition:

1. Beer dispensers (Models SBC490B and SBC570R); be tested at an ambient temperature of 70°F (per DOE's estimate of approximately 70°F as typical room-temperature) with the doors closed;

2. Hotel and assisting living refrigerators (Models FF71TB, FF73, FF74, AL650R, ALB651BR, AL652BR, ALB653BR, CT66RADA, CT67RADA, AL750R, ALB751R, AL752BR, ALB753LBR. FF28LH, FF29BKH, FFAR21H, and FFAR2H) be tested at 72°F to account for the very small number of daily door openings (where 2°F is 10% of the difference between 70°F and 90°F and door openings of these products groups are no more than 10% of the typical household refrigerators);

3. The units be tested for 24 continuous hours after stabilization to account for any timers used in the assisted living and hotel refrigerators; and

4. All other test procedures be conducted in accordance with AHAM and DOE test procedures for residential refrigerators.

Additional Arguments for Granting This Waiver

FSI targets niche markets with many models, including those referenced herein, where the overall sales volume is too limited to appeal to manufacturers driven by mass production and economies of scale. In some cases, not allowing products that address certain size or use needs to market will have the unintended consequences of substantially reducing consumer choice and driving energy consumption up through a switch to larger models.

For example, in the case of the assisted living markets, withdrawing specialty products from this small, niche market may force facilities to purchase larger refrigerators than necessary, increasing overall energy usage. The convenience and accessibility of these compact products is often more appropriate for assisted living residents. If suitably sized products are not available, facilities might be forced to remodel a kitchenette when a refrigerator needs replacing.

In the case of the hotel industry, hotels (excluding extended stay hotels or suite type hotels) often use refrigerators that are driven by an absorption cooling system or by a thermoelectric cooling system (also called heat pipe systems). These cooling systems use significantly more energy than compressor systems, but are chosen by hotels for their low noise levels. It is important to note that these basic units may not be covered products for DOE because their design does not always allow them to reach the 39°F threshold and, therefore, may not be considered a refrigerator per the statutory definition. [*See* 10 CFC § 430.2 (defining an electric refrigerator as ''a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32°F (0°C) and below 39°F (3.9°C), and having a source of refrigeration requiring single phase, alternating current electric energy input only.'')]. Consequently, by excluding FSI compressor models from competing in this market, hotels will use models with absorption or thermoelectric systems which use substantially more energy than the excluded products.

Economic Burden of the Regulations on Small Business in General and FSI in Particular

Failure to grant these basic models waivers from test procedures would have severe economic consequences for FSI.

Very large, multi-national corporations dominate the appliance market, led by Whirlpool and General Electric, whose sales are in the billions of dollars. Foreign companies with appliance sales in the billions of dollars and with a large U.S. presence include Electrolux (Frigidaire), LG, Samsung, Daiwoo, Bosch, Liebherr, Miele, AGA-Marvel, Bertazoni, Smeg, Haier, and Midea. FSI cannot compete with these companies' mass markets, with huge economies of scale on production, and distribution and insignificant compliance testing costs. FSI predominantly markets specialty appliances that respond to niche market demands and customer choice.

In response to DOE 2014 test procedures, FSI is working very hard to modify the vast majority of its residential refrigerator and freezer product line to comply with the new procedures. But in a number of niche markets with very small sales, the feasibility and costs of compliance are highly disproportionate for FSI to make a business case and will not result in energy savings. This results in an undue burden on FSI, for which these niche products form the nucleus of FSI's manufacturing operations and are the driver of job creation in disadvantaged economic development areas. Unlike the large companies mentioned above who can spread the cost of meeting current DOE and upcoming DOE 2014 standards and, in particular, test procedures over a base of millions, hundreds of thousands, or tens of thousands of units, a small business like FSI does not have this option.

DOE has acknowledged the difficulties faced by both small manufacturers and the compact refrigeration industry dealing with standards. FSI falls into both categories and 90% of FSI's refrigeration business is restricted to compact classes. DOE reports that compact appliances only account for 2.5% of total energy consumed by all refrigeration products.[35] FSI's assumption is that at least 75% of that small number is consumed by college dormitory/office type products, meaning that less than 1% of total refrigeration energy use is consumed by ''specialty'' compact appliances, such as those listed in this petition. FSI's market share even in these small niche markets is quite limited. The appliances in this waiver application are a negligible part of that tiny subset and any energy consumption impacts from this waiver are highly de minimis at most. DOE recognizes the limited options available to compact appliance manufacturers, ''[b]ecause of small production volumes, the impact of new standards on these manufacturers is relatively severe.''[36] This is especially true ahead of DOE 2014 requirements, which mandate a 20% reduction of usage and few affordable alternatives for reducing energy consumption in niche appliances that meet consumer demand.

FSI greatly appreciates DOE's prompt attention to this petition for waiver, to allow for proper planning and avoiding additional, unnecessary economic hardship and financial burdens on FSI. Design changes to existing models and new product introductions routinely take 8 to 12 months for appliances. Without a prompt response to this petition for waiver, FSI cannot effectively plan its product line in a manner compliant with the new procedures and standards that take effect on September 15, 2014. For a small business manufacturer such as FSI, who specializes in niche product markets, uncertainty over test procedures will cause unnecessary costs without delivering any energy benefits or savings.

DOE in its guidance on waivers commits to act promptly on waiver requests[37].

''First, the Department commits to act promptly on waiver requests and to update

[35] *See* **Federal Register** Vol. 62 No. 81, Page 23111, April 28, 1997.

[36] *Id.*

[37] GC Enforcement Guidance on the Application of Waivers and on the Waiver Process Issued: December 23, 2010, see *http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf*

its test procedures to address granted waivers going forward. Second, to prevent the administrative waiver process from delaying or deterring the introduction of novel, innovative products into the marketplace, the Department, as a matter of enforcement policy, will refrain from enforcement actions related to pending waiver requests''.

FSI appreciates DOE's recognition of the need to act promptly on these waiver requests and hopes DOE will take such an approach in responding to this petition in a manner that does not impose additional economic burdens on FSI. The objective is to assure that all test procedures result in representative indication of a product's true energy consumption, without imposing unnecessary costs on small business appliance manufacturers such as FSI.

Conclusions

The waiver process clearly is intended for situations where test procedures do not provide an accurate representation of actual energy consumption. FSI has demonstrated that the test procedures specified by DOE do not provide representative measure of the basic models in this waiver application, whose doors are opened and closed significantly less than typical household use.

FSI has demonstrated that:

- The use of 90°F is designed to simulate an average of 40 to 50 door openings per day and, even at that level, may overstate energy usage;
- The models listed in this waiver application have their doors opened and closed infrequently, and certainly significantly less than the simulation average;
- An alternate test procedure is readily available consisting of testing the products at 70°F or 72°F, over a 24 hour period, and holding all other test procedures in accordance with AHAM Procedures and 10 CFR § 430, Subpart B, Appendix A;
- Failure to grant this waiver will cause severe economic hardship to FSI, and in some cases, will cause energy consumption to be higher than if the waiver were granted.

FSI respectfully requests DOE waive the test procedures for the products listed in the petition as these ''test procedures may evaluate [these product] . . . in a manner so unrepresentative of [their] true energy consumption characteristics . . . as to provide materially inaccurate comparative data.'' 10 C.F.R. § 430.27. All of these basic units have materially different uses than the average products subject to the test procedures. The proposed alternative procedures will provide an accurate representation of actual energy use. For these reasons, FSI respectfully requests that DOE substitute our proposed test procedures and waive the test procedures at 10 CFR § 430, Subpart B, Appendix A for FSI's beer coolers, assisted living refrigerator-freezers and hotel refrigerators.

Respectfully submitted,

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[FR Doc. 2014–05778 Filed 3–14–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–084]

Safe Harbor Water Power Corporation; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 1025–084.

c. *Date Filed:* January 31, 2014.

d. *Applicant:* Safe Harbor Water Power Corporation.

e. *Name of Project:* Safe Harbor Hydroelectric Project.

f. *Location:* Susquehanna River in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Ted Rineer, Safe Harbor Water Power Corporation, 1 Powerhouse Road, Conestoga, PA, (717) 872–0273.

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.Martin@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* April 9, 2014.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. In lieu of electronic filing please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1025–084) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee requests Commission approval to permanently raise the normal maximum water surface elevation of Lake Clarke from 227.2 feet to 227.6 feet during April 15 to October 15. In addition the licensee requests authorization to temporarily adjust the April 15 to October 15 normal maximum water surface elevation higher (up to elevation 228.0 feet), if the results of the Safe Harbor annual spring mudflat surveys demonstrate that the minimum area of shorebird habitat can be maintained, pursuant to Article 49, and if a fish stranding survey pursuant to Article 47 shows that the higher normal maximum level would not result in a substantial increase in fish stranding in Lake Clarke.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1025) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by a proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 10, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–05800 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–65–000.
Applicants: Desert View Power, Inc., Eel River Power LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Expedited Action and Shortened Comment Period of Desert View Power, Inc., et al.
Filed Date: 3/6/14.
Accession Number: 20140306–5158.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: EC14–66–000.
Applicants: Scrubgrass Generating Company, L.P.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Scrubgrass Generating Company, L.P.
Filed Date: 3/7/14.
Accession Number: 20140307–5082.
Comments Due: 5 p.m. ET 3/28/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–5–003; ER11–6–002; ER13–131–002; ER14–479–001; ER14–950–001.
Applicants: Great Bay Energy I LLC, Great Bay Energy IV, LLC, Great Bay Energy LLC, Great Bay Energy V, LLC, Great Bay Energy VI, LLC, Great Bay Energy, LLC.
Description: Notice of Non-Material Change in Status of the Great Bay Energy Companies.
Filed Date: 3/6/14.
Accession Number: 20140306–5160.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–836–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–03–07_SA 2622 Courtenay & OTP (J262–3) E&P Compliance Filing to be effective 12/27/2013.
Filed Date: 3/7/14.
Accession Number: 20140307–5023.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–846–001.
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.
Description: 20140306-Theoretical Reserve Update to be effective 1/1/2013.
Filed Date: 3/6/14.
Accession Number: 20140306–5153.
Comments Due: 5 p.m. ET 3/20/14.

Docket Numbers: ER14–998–001.
Applicants: Richland-Stryker Generation LLC.
Description: Amendment to 3 to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5146.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1341–001.
Applicants: Solea Energy, LLC.
Description: Amended MBR Filing to be effective 3/1/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5123.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1438–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3764; Queue No. Y3–029 to be effective 2/4/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5134.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1439–000.
Applicants: TrailStone Power, LLC.
Description: TrailStone MBR filing to be effective 3/7/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5147.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1440–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Limited Waiver of Tariff Provisions and Expedited Commission Action to be effective N/A.
Filed Date: 3/6/14.
Accession Number: 20140306–5152.
Comments Due: 5 p.m. ET 3/13/14.

Docket Numbers: ER14–1441–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: PASNY Tariff Amendment to be effective 3/1/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5154.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1442–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Tariff Waiver and Next-Day Action to be effective N/A.
Filed Date: 3/6/14.
Accession Number: 20140306–5155.
Comments Due: 5 p.m. ET 3/11/14.

Docket Numbers: ER14–1443–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA and Distribution Service Agreement With SCE's GPS to be effective 5/7/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5002.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1444–000.
Applicants: Southern California Edison Company.
Description: LGIA with Palmdale Energy, LLC to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5005.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1445–000.
Applicants: Dunkirk Power LLC.
Description: Requests of Dunkirk Power LLC for Limited Tariff Waiver, Extension Under the Tariff and Commission Action by July 2, 2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5161.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1446–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–03–07_SA 2037 Ameren-Wabash Valley (Citizens) WDS Agreement to be effective 1/1/2014.

Filed Date: 3/7/14.
Accession Number: 20140307–5062.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1447–000.
Applicants: Southwest Power Pool, Inc.
Description: 2809 Cimarron Wind Energy & Sunflower Meter Agent Agreement to be effective 3/1/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5087.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1448–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Rev. to Security Agreement as an Exhibit to FAP to be effective 3/7/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5088.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1449–000.
Applicants: Arizona Public Service Company.
Description: Service Agreement No. 330, LGIA With Copper Mountain Solar 3, LLC to be effective 2/10/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5104.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1450–000.
Applicants: Indigo Generation LLC.
Description: Order No. 784 Compliance Filing to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5127.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1451–000.
Applicants: Larkspur Energy LLC.
Description: Order No. 784 Compliance Filing to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5128.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1452–000.
Applicants: Wildflower Energy LP.
Description: Order No. 784 Compliance Filing to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5129.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1453–000.
Applicants: Mariposa Energy, LLC.
Description: Order No. 784 Compliance Filing to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5132.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1454–000.
Applicants: RC Cape May Holdings, LLC.
Description: Request for Waiver of Must-Offer Requirement of RC Cape May Holdings, LLC.
Filed Date: 3/7/14.
Accession Number: 20140307–5168.
Comments Due: 5 p.m. ET 3/28/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05766 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3376–002.
Applicants: North Hurlburt Wind, LLC.
Description: Triennial Updated Market Power Analysis to be effective 11/27/2013.
Filed Date: 3/7/14.
Accession Number: 20140307–5197.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER11–3377–002.
Applicants: Horseshoe Bend Wind, LLC.
Description: Updated Market Power Analysis to be effective 11/27/2013.
Filed Date: 3/7/14.
Accession Number: 20140307–5196.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER11–3378–002.
Applicants: South Hurlburt Wind, LLC.
Description: Triennial Updated Market Power Analysis to be effective 11/27/2013.
Filed Date: 3/7/14.
Accession Number: 20140307–5198.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER13–1523–000.
Applicants: Blythe Energy Inc.
Description: Supplement to August 13, 2013 Updated Market Power Analysis for Southwest Region of Blythe Energy Inc.
Filed Date: 2/21/14.
Accession Number: 20140221–5130.
Comments Due: 5 p.m. ET 3/20/14.

Docket Numbers: ER14–1302–000; ER14–1302–001.
Applicants: Seminole Retail Energy Services, L.L.C.
Description: Second Supplement to February 11, 2014 Seminole Retail Energy Services, L.L.C. tariff filing.
Filed Date: 3/7/14.
Accession Number: 20140307–5250.
Comments Due: 5 p.m. ET 3/17/14.

Docket Numbers: ER14–1455–000.
Applicants: San Diego Gas & Electric Company.
Description: SDGE Amendment to Generator Interconnection Procedures to be effective 5/6/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5199.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1456–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Service Agreement No. 3355; Queue No. W3–044 to be effective 2/4/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5233.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1457–000.
Applicants: Southern California Edison Company.
Description: LGIA with Avalon Wind, LLC, Avalon Wind 2, LLC, and Valentine Solar, LLC to be effective 3/11/2014.
Filed Date: 3/10/14.
Accession Number: 20140310–5008.
Comments Due: 5 p.m. ET 3/31/14.

Docket Numbers: ER14–1458–000.
Applicants: East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc.
Description: East Texas Electric Cooperative, Inc., et. al. Filing of Proposed Revenue Requirement for Reactive Supply and Voltage Control from Generation or Other Sources Service Under Schedule 2 of the MISO Tariff.
Filed Date: 3/7/14.
Accession Number: 20140307–5255.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1459–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Filing of a Certificate of Concurrence to be effective 2/28/2014.
Filed Date: 3/10/14.

Accession Number: 20140310–5081.
Comments Due: 5 p.m. ET 3/31/14.

Docket Numbers: ER14–1460–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position Z1–127; Original Service Agreement No. 3768 to be effective 2/7/2014.
Filed Date: 3/10/14.
Accession Number: 20140310–5217.
Comments Due: 5 p.m. ET 3/31/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–3–000.
Applicants: NextEra Energy Companies.
Description: Second Amendment to December 19, 2013 Quarterly Land Acquisition Report of the NextEra Energy Companies.
Filed Date: 3/10/14.
Accession Number: 20140310–5056.
Comments Due: 5 p.m. ET 3/31/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 10, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05787 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–27–000.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123(b)(1)/.: Revised Fuel Percentages for April 1, 2014 through March 31, 2015 to be effective 2/28/2014; TOFC: 980.
Filed Date: 2/28/14.
Accession Number: 20140228–5144.
Comments Due: 5 p.m. ET 3/21/14.

Docket Numbers: PR14–28–000.
Applicants: American Midstream (Louisiana Intrastate), LLC.
Description: Tariff filing per 284.123(e)/.224: Fuel Retention Adjustment to be effective 4/1/2014; TOFC: 770.
Filed Date: 2/28/14.
Accession Number: 20140228–5169.
Comments Due: 5 p.m. ET 3/21/14.

Docket Numbers: PR14–29–000.
Applicants: Crosstex LIG, LLC.
Description: Tariff filing per 284.123(b)(2)/.: Petition for Approval of Rates to be effective 3/4/2014; TOFC: 760.
Filed Date: 3/6/14.
Accession Number: 20140306–5062.
Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: PR14–30–000.
Applicants: Overland Trail Transmission, LLC.
Description: Tariff filing per 284.123(g)/.224: Cancellation of Statement of Operating Conditions to be effective 4/1/2014; TOFC: 1290.
Filed Date: 3/6/14.
Accession Number: 20140306–5065.
Comments Due: 5 p.m. ET 3/27/14.
284.123(g) Protests Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–605–000.
Applicants: Gulf South Pipeline Company, LP.
Description: PAL Neg Rate Agmts (42112, 42113, 42114, 42115, 42116) to be effective 3/5/2014.
Filed Date: 3/5/14.
Accession Number: 20140305–5051.
Comments Due: 5 p.m. ET 3/17/14.

Docket Numbers: RP14–608–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming Agreement Filing (MGI) to be effective 4/6/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5057.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: RP14–609–000.
Applicants: Golden Pass Pipeline LLC.
Description: Golden Pass Pipeline LLC Cost and Revenue Study CP04–400–002.
Filed Date: 3/7/14.
Accession Number: 20140307–5003.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: RP14–610–000.
Applicants: TC Offshore LLC.
Description: Arena_Superior Neg Rate Agmts to be effective 3/7/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5016.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: RP14–611–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Request for extension of previously-granted authority to acquire and use off-system Millennium Pipeline Company, L.L.C.'s capacity of Columbia Gas Transmission, LLC.
Filed Date: 3/7/14.
Accession Number: 20140307–5091.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: RP14–612–000.
Applicants: Eni Petroleum US LLC,ENI USA Gas Marketing LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations and Policies and Related Tariff Provisions and Request for Expedited Action of Eni Petroleum US LLC and Eni USA Gas Marketing LLC.
Filed Date: 3/7/14.
Accession Number: 20140307–5102.
Comments Due: 5 p.m. ET 3/14/14.

Docket Numbers: RP14–613–000.
Applicants: Northwest Pipeline LLC.
Description: Grandfathered Unilateral Evergreen Provision to be effective 4/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5191.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: RP14–614–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate Filing-Integrys Energy to be effective 3/8/2014.
Filed Date: 3/7/14.
Accession Number: 20140307–5222.
Comments Due: 5 p.m. ET 3/19/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–877–008.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Cameron Interstate Pipeline Revised Section 9.0_March 2014 to be effective 11/1/2010 under RP10–877 Filing Type: 580.
Filed Date: 3/6/14.
Accession Number: 20140306–5081.
Comments Due: 5 p.m. ET 3/18/14.

Any person desiring to protest in any of the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated March 10, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05789 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–615–000.
Applicants: Transcontinental Gas Pipe Line Company
Description: Cancellation of Service Agreements—Cherokee to be effective 4/10/2014.
Filed Date: 3/10/14.
Accession Number: 20140310–5100.
Comments Due: 5 p.m. ET 3/24/14.

Docket Numbers: RP14–616–000.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Section 7.8 Resolution of Imbalances to be effective 4/11/2014.
Filed Date: 3/11/14.
Accession Number: 20140311–5028.
Comments Due: 5 p.m. ET 3/24/14.

Docket Numbers: RP14–617–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Negotiated Rate—SW Energy contract 820131 4–1–2014 to be effective 4/1/2014.
Filed Date: 3/11/14.
Accession Number: 20140311–5029.
Comments Due: 5 p.m. ET 3/24/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 11, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05790 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–606–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: GSS and LSS Fuel Tracker Filing to be effective 3/1/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5038.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: RP14–607–000.
Applicants: Gulf South Pipeline Company, LP.
Description: PAL Neg Rate Agmt (Tenaska 42139) to be effective 3/5/2014.
Filed Date: 3/6/14.
Accession Number: 20140306–5044.
Comments Due: 5 p.m. ET 3/18/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 6, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05788 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–23–000]

Sunoco Pipeline L.P.; SunVit Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on March 6, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Sunoco Pipeline L.P. and SunVit Pipeline LLC jointly filed a petition requesting a declaratory order, approving the specified rate structures, terms of service, and prorationing methodology for the proposed Permian Express 2 pipeline project (Project). The Project will carry crude oil from the Permian Basin in west Texas to downstream markets and refineries, as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on April 11, 2014.

Dated: March 11, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–05799 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–22–000]

Valero Terminaling and Distribution Company; Notice of Petition for Temporary Waiver

Take notice that on March 4, 2014, pursuant to Rule 204 of the Commission's Rules of Practices and Procedure, 18 CFR 385.202, Valero Terminaling and Distribution Company (VTDC) filed a petition requesting that the Commission grant a temporary waiver of the Interstate Commerce Act's section 6 and section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines. VTDC's waiver request applies to the Turpin Pipeline system which VTDC owns and operates, as explained more fully in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on March 25, 2014.

Dated: March 11, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–05798 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–97–000]

Carolina Gas Transmission Corporation; Notice of Request Under Blanket Authorization

Take notice that on February 28, 2014, Carolina Gas Transmission Corporation (CGT), 601 Old Taylor Road, Cayce, South Carolina 29033, filed in Docket No. CP14–97–000, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to construct a new compressor station near Edgemoor, Chester County, South Carolina (Edgemoor Compressor Station). CGT also proposes to install, approximately 1,300 feet of 8-inch diameter pipeline, and to increase the maximum allowable operating pressure on its existing Line 2 (Edgemoor Compressor Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Specifically, CGT states that the Edgemoor Compressor Project will provide an additional 45,000 dekatherms per day of firm transportation capacity to two customers. CGT submits that the Edgemoor Compressor Station will consist of three 1,600 horsepower (HP) natural gas-fired turbine compressor units and one 4,700 HP natural gas-fired turbine compressor unit. CGT estimates that the cost of the proposed Project will be $23.8 million.

Any questions concerning this application may be directed to each of the following persons: Michael R. Ferguson, Carolina Gas Transmission Corporation, 601 Old Taylor Road, Cayce, South Carolina, 29033, by telephone (803) 217–2107 or by email at *mferguson@scana.com*; or Shelby L. Provencher, SCANA Corporation, Mail Code C222, 220 Operation Way, Cayce, South Carolina 29033, by telephone at (803) 217–7802, or by email at *shelby.provencher@scana.com*.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is

issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Dated: March 10, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–05797 Filed 3–14–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2013–0788; FRL–9908–19–Region–10]

Proposed Information Collection Request; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Proposed Information Collection Request; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington'' (EPA ICR No. 2020.06, OMB Control No. 2060–0558) 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.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2014. 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: Comments must be submitted on or before May 16, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R10–OAR–2013–0788 online using *www.regulations.gov* (our preferred method), by email to *R10-Public_Comments@epa.gov*, or by mail: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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: Paul Koprowski, Office of Air, Waste and Toxics, Oregon Operations Office, Environmental Protection Agency Region 10, 805 SW Broadway, Suite 500, Portland, OR 97205; telephone number: (503) 326–6363; fax number: (503) 326–3399; email address: *koprowski.paul@EPA.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that 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*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA promulgated Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations located in Idaho, Oregon, and Washington in 40 CFR part 49 (70 FR 18074, April 8, 2005). The FIPs in the final rule, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), include information collection requirements associated with the partial delegation of administrative authority to a Tribe in § 49.122; the rule for limiting visible emissions at § 49.124; fugitive particulate matter rule in § 49.126, the wood waste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the rule for emissions detrimental to human health and welfare in § 49.135; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA uses this information to manage the activities and sources of air pollution on the Indian reservations in Idaho, Oregon, and Washington. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, track emissions trends and changes, identify potential air quality problems, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory. Regulated entities can assert claims of

business confidentiality and EPA will address these claims in accordance with the provisions of 40 CFR Part 2, subpart B.

Form Numbers:

The forms associated with this ICR are:

EPA Form 7630–1 Nez Perce Reservation Air Quality Permit: Agricultural Burn

EPA Form 7630–2 Nez Perce Reservation Air Quality Permit: Forestry Burn

EPA Form 7630–3 Nez Perce Reservation Air Quality Permit: Large Open Burn

EPA Form 7630–4 Initial or Annual Source Registration

EPA Form 7630–5 Report of Change of Ownership

EPA Form 7630–6 Report of Closure

EPA Form 7630–7 Report of Relocation

EPA Form 7630–9 Non-Title V Operating Permit Application Form

EPA Form 7630–10 Umatilla Indian Reservation: Agricultural Burn Permit Application

EPA Form 7630–11 Umatilla Indian Reservation: Forestry Burn Permit Application

EPA Form 7630–12 Umatilla Indian Reservation Large Open Burn Permit Application

The forms listed above are available for review in the EPA docket.

Respondents/affected entities:

Respondents or affected entities potentially affected by this action include owners and operators of emission sources in all industry groups and tribal governments, located in the identified Indian reservations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS[a]	Examples of regulated entities
Industry	4471	Gasoline station storage tanks and refueling.
	5614	Lumber manufacturer support.
	21211	Coal mining.
	31332	Surface coating operation.
	33712	Furniture manufacture.
	56221	Medical waste incinerator.
	115112	Repellent and fertilizer applications.
	211111	Natural gas plant.
	211111	Oil and gas production.
	211112	Fractionation of natural gas liquids.
	212234	Copper mining and processing.
	212312	Stone quarrying and processing.
	212313	Stone quarrying and processing.
	212321	Sand and gravel production.
	221112	Power plant-coal-fired.
	221119	Power plant-biomass fueled.
	221119	Power plant-landfill gas fired.
	221210	Natural gas collection.
	221210	Natural gas pipeline.
	321113	Sawmill.
	321911	Window and door molding manufacturer.
	323110	Printing operations.
	323113	Surface coating operations.
	324121	Asphalt hot mix plants.
	325188	Elemental phosphorus plant.
	325188	Sulfuric acid plant.
	331314	Secondary aluminum production and extrusion.
	331492	Cobalt and tungsten recycling.
	332431	Surface coating operations.
	332812	Surface coating operations.
	421320	Concrete batching plant.
	422510	Grain elevator.
	422710	Crude oil storage and distribution.
	422710	Gasoline bulk plant.
	486110	Crude oil storage and distribution.
	486210	Natural gas compressor station.
	562212	Solid waste landfill.
	811121	Automobile refinishing shop.
	812320	Dry cleaner.
	111140	Wheat farming.
	111998	All other miscellaneous crop farming.
	115310	Support activities for forestry.
Federal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.
State/local/tribal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action.

Respondent's obligation to respond: Respondents obligation to respond is mandatory. See 40 CFR 49.122, 49.124, 49.126, 49.130–135, 49.138, and 49.139.

Estimated number of respondents: 1694.

Frequency of response: Annual or on occasion.

Total estimated burden: 6,245 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $396,245 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: New cost estimates are not available for publication at this time. Cost estimates are not expected to change substantially due to little change in the respondent universe or federal requirements.

Dated: March 6, 2014.

Kate Kelly,

Director, Office of Air, Waste and Toxics.

[FR Doc. 2014–05814 Filed 3–14–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0132; FRL–9908–14–OECA]

Proposed Information Collection Request; Comment Request; Recordkeeping Requirements for Producers, Registrants and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); EPA ICR Number 0143.12, OMB Control Number 2070–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Recordkeeping Requirements for Producers, Registrants and Applicants of Pesticides and Pesticide Devices under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (EPA ICR No. 0143.12, OMB Control No. 2070–0028) 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.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2014. 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: Comments must be submitted on or before May 16, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2014–0132, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4203; fax number: (202) 564–0085; email: *stevenson.michelle@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*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Producers of pesticides and pesticide devices must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR Part 169. This information collection is mandatory under FIFRA Section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, the Office of Enforcement and Compliance Assurance (OECA), and the Office of Pesticide Programs (OPP) within the Office of Chemical Safety and Pollution Prevention (OCSPP), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and other Federal agencies, States under Cooperative Enforcement Agreements, and 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.

Form Numbers: None.

Respondents/affected entities: Producers of pesticides and pesticide devices for sale or distribution in or exported to the United States.

Respondent's obligation to respond: Mandatory (40 CFR part 169).

Estimated number of respondents: 11,600 (total).

Frequency of response: Annual.

Total estimated burden: 23,200.

Total estimated cost: $1,762,040. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Changes in Estimates: There is a decrease of 3,600 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is an adjustment due to a change in the number of respondents since the last ICR.

Dated: March 7, 2014.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. 2014–05810 Filed 3–14–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 16, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 07–223.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 4,160 respondents; 22,330 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 10 hours.

Frequency of Response: Recordkeeping requirement; Biennial, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104–104, 110 Stat. 56.

Total Annual Burden: 91,547 hours.

Total Annual Cost: $51,285,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries'', in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: Section 258 of the Telecommunications Act of 1996 directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* On January 9, 2008, the Commission released the *Fourth Report and Order,* CC Docket No. 94–129, FCC 07–223, revising its requirements concerning verification of a consumer's intent to switch carriers.

The *Fourth Report and Order* modified the information collection requirements contained in 64.1120(c)(3)(iii) to provide for verifications to elicit ''confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized.''

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–05717 Filed 3–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502—3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB Control Number.

DATES: Written PRA comments should be submitted on or before April 16, 2014. If you anticipate that you will be

submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Smith, OMD, FCC, at 202–418–0217, or via the Internet at: *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0391.

Title: Parts 54 and 36, Program to Monitor the Impacts of the Universal Service Support Mechanisms.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 313 respondents; 1,252 responses.

Estimated Time per Response: 40 minutes.

Frequency of Response: Quarterly reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254, and 410.

Total Annual Burden: 836 hours.

Total Annual Cost: No costs.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The data requested are regarded as non-proprietary. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459.

Needs and Uses: The monitoring program is necessary for the Commission, the Federal-State Joint Board on Universal Service, Congress and the general public to assess the impact of the universal service support mechanisms. This information collection should be continued because network usage and growth data have proven to be a valuable source of information about the advancement of universal service.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–05746 Filed 3–14–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 16, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 210 respondents; 210 responses.

Estimated Time per Response: 0.5–6 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,029 hours.

Total Annual Costs: $2,126,100.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (''First R&O'') in MB Docket No. 09–52, FCC 10–24. The First R&O adopted changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the First R&O, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, Tribal consortia, and majority Tribal-owned entities proposing to serve Tribal lands. As adopted in the First R&O, the priority is only available when all of the following conditions are met: (1) The applicant is either a Federally recognized Tribe or Tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the area within the proposed station's daytime principal community contour is over that Tribe's Tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on Tribal lands; and (4) in the commercial AM service, the applicant

must propose first or second aural reception service or first local commercial Tribal-owned transmission service to the proposed community of license, which must be located on Tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims.

On March 3, 2011, the Commission adopted a Second Report and Order (''Second R&O''), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09–52, FCC 11–28. The First Order on Reconsideration modified the initially adopted Tribal Priority coverage requirement, by creating an alternate coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their Tribal lands are too small or irregularly shaped to comprise 50 percent of a station's signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour encompasses 50 percent or more of that Tribe's Tribal lands, but does not cover more than 50 percent of the Tribal lands of a non-applicant Tribe; (ii) serves at least 2,000 people living on Tribal lands, and (iii) the total population on Tribal lands residing within the station's service contour constitutes at least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O included a rebuttable ''Urbanized Area service presumption'' under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility ''could be modified'' to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

In the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a ''service value index'' as set forth in the case of Greenup, Kentucky and Athens, Ohio, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–05747 Filed 3–14–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–0212]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Leroy Richardson, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Hospital Care Survey (NHCS) (OMB No. 0920–0212, Expires 04–30–2016)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This three-year clearance request for NHCS includes the collection of all impatient and ambulatory Uniform Bill–04 (UB–04) claims data or electronic health record (EHR) data from a sample of 581 hospitals as well as the collection of additional clinical data from a sample of

emergency department (ED) and outpatient department (OPD) visits (including ambulatory surgeries) through the abstraction of medical records.

NHCS integrates the former National Hospital Discharge Survey (OMB No. 0920–0212), the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–0278) and the Drug-Abuse Warning Network (DAWN) (OMB No. 0930–0078, expired 12/31/2011) previously conducted by the Substance Abuse and Mental Health Services Administration's (SAMHSA). Integration of NHAMCS and DAWN into the NHCS is part of a broader strategy to improve efficiency by minimizing redundancy in data collection; broadening our capability to collect more relevant data on transitions of care; and identifying opportunities to exploit electronic and administrative clinical data systems to augment primary data collection.

NHCS consists of a nationally representative sample of 581 hospitals. These hospitals are currently being recruited, and participating hospitals are submitting all of their inpatient and ambulatory care patient data in the form of electronic UB–04 administrative claims or EHR data. Currently, hospital-level data are collected through a paper questionnaire and additional clinical data are being abstracted from a sample of visits to EDs and OPDs. This activity continues in 2014, and as more hospitals choose to send EHR data that includes clinical information, the need to conduct abstraction will be reduced.

This revision seeks approval to continue voluntary recruitment and data collection for NHCS, including inpatient, outpatient and emergency care; to revise the hospital-level questionnaire with additional items needed to improve weighting procedures; to combine the OPD and ambulatory surgery location patient record forms to more effectively capture ambulatory procedures in these settings; to continue collection of substance-involved ED visit data previously collected by DAWN; and to eliminate data collection from freestanding ambulatory surgery centers in order to concentrate efforts on hospital-based settings of care.

NHCS collects data items at the hospital, patient, inpatient discharge, and visit levels. Hospital-level data items include ownership, number of staffed beds, hospital service type, and EHR adoption. Patient-level data items are collected from both electronic data and abstraction components and include basic demographic information, personal identifiers, name, address, social security number (if available), and medical record number (if available). Discharge-level data are collected through the UB–04 claims or EHR data and include admission and discharge dates, diagnoses, diagnostic services, and surgical and non-surgical procedures. Visit-level data are collected through either EHR data, or for those hospitals submitting UB–04 claims, through the claims as well as through abstraction of medical records for a sample of visits. These visit-level data include reason for visit, diagnosis, procedures, medications, substances involved, and patient disposition.

NHCS users include, but are not limited to, CDC, Congressional Research Office, Office of the Assistant Secretary for Planning and Evaluation (ASPE), National Institutes of Health, American Health Care Association, Centers for Medicare & Medicaid Services (CMS), SAMHSA, Bureau of the Census, Office of National Drug Control Policy, state and local governments, and nonprofit organizations. Other users of these data include universities, research organizations, many in the private sector, foundations, and a variety of users in the media.

Data collected through NHCS are essential for evaluating health status of the population, for the planning of programs and policy to improve health care delivery systems of the Nation, for studying morbidity trends, and for research activities in the health field. Historically, data have been used extensively in the development and monitoring of goals for the Year 2000, 2010, and 2020 Healthy People Objectives.

There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Hospital DHIM or DHIT	Initial Hospital Intake Questionnaire	160	1	1	160
Hospital CEO/CFO	Recruitment Survey Presentation	160	1	1	160
Hospital CEO/CFO	Annual Hospital Interview	581	1	2	1,162
Hospital CEO/CFO	Annual Ambulatory Hospital Interview.	465	1	1.5	698
Hospital DHIM or DHIT	Prepare and transmit UB–04 for Inpatient and Ambulatory data.	481	12	1	5,772
Hospital DHIM or DHIT	Prepare and transmit EHR for Inpatient and Ambulatory data.	100	4	1	400
Total					8,352

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–05801 Filed 3–14–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10519]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *May 16, 2014:*

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10519 Physician Quality Reporting System (PQRS) and the Electronic Prescribing Incentive (eRx) Program Data Assessment, Accuracy and Improper Payments Identification Support

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Physician Quality Reporting System (PQRS) and the Electronic Prescribing Incentive (eRx) Program Data Assessment, Accuracy and Improper Payments Identification Support; Use: The incentive and reporting programs have data integrity issues, such as rejected and improper payments. This four year project will evaluate incentive payment information for accuracy and identify improper payments, with the goal of recovering these payments. Additionally, based on the project's results, recommendations will be made so that we can avoid future data integrity issues.

Data submission, processing, and reporting will be analyzed for potential errors, inconsistencies, and gaps that are related to data handling, program requirements, and clinical quality measure specifications of PQRS and eRx program. Surveys of Group Practices, Registries, and Data Submission Vendors (DSVs) will be conducted in order to evaluate the PQRS and eRx Incentive Program. Follow-up interviews will occur with a small number of respondents. *Form Number:* CMS–10519 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 700. (For policy questions regarding this collection contact Sungsoo Oh at 410–786–7611.)

Dated: March 11, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–05845 Filed 3–14–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–153, CMS–10239 and CMS–724]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public

comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 16, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review Program; *Use:* This information collection is necessary to: Establish patient profiles in pharmacies; identify problems in prescribing, dispensing, or both prescribing and dispensing; determine each program's ability to meet minimum standards required for federal financial participation; and ensure quality pharmaceutical care for Medicaid patients. State Medicaid agencies that have prescription drug programs are required to perform prospective and retrospective drug use review in order to identify aberrations in prescribing, dispensing, and patient behavior. The information collection request has been revised subsequent to the publication of the 60-day **Federal Register** notice on November 29, 2013 (78 FR 71617). *Form Number:* CMS–R–153 (OCN: 0938–0659); *Frequency:* Yearly, Quarterly, and Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 663; *Total Annual Hours:* 20,502. (For policy questions regarding this collection contact Madlyn Kruh at 410–786–3239).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Conditions of Participation for Critical Access Hospitals (CAH) and Supporting Regulations; *Use:* At the outset of the critical access hospital (CAH) program, the information collection requirements for all CAHs were addressed together under the following information collection request: CMS–R–48 (OCN: 0938–0328). As the CAH program has grown in both scope of services and the number of providers, the burden associated with CAHs with distinct part units (DPUs) was separated from the CAHs without DPUs. Section 1820(c)(2)(E)(i) of the Social Security Act provides that a CAH may establish and operate a psychiatric or rehabilitation DPU. Each DPU may maintain up to10 beds and must comply with the hospital requirements specified in 42 CFR Subparts A, B, C, and D of part 482. Presently, 105 CAHs have rehabilitation or psychiatric DPUs. The burden associated with CAHs that have DPUs continues to be reported under CMS–R–48, along with the burden for all 4,890 accredited and non-accredited hospitals.

The CAH conditions of participation and accompanying information collection requirements specified in the regulations are used by surveyors as a basis for determining whether a CAH meets the requirements to participate in the Medicare program. We, along with the healthcare industry, believe that the availability to the facility of the type of records and general content of records, which this regulation specifies, is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. *Form Number:* CMS–10239 (OCN: 0938–1043); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit; *Number of Respondents:* 1,233; *Total Annual Responses:* 152,942; *Total Annual Hours:* 24,723. (For policy questions regarding this collection contact Mary Collins at 410–786–3189.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare/Medicaid Psychiatric Hospital Survey Data; *Use:* The CMS–724 form is used to collect data that assists us in program planning and evaluation and in maintaining an accurate database on providers participating in the psychiatric hospital program. Specifically, we use the information collected on this form in evaluating the Medicare psychiatric hospital program. The form is also used for audit purposes; determining patient population and characteristics of the hospital; and survey term composition. *Form Number:* CMS–724 (OCN: 0938–0378); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 500; Total *Annual Responses:* 150; *Total Annual Hours:* 75. (For policy questions regarding this collection contact Donald Howard at 410–786–6764.)

Dated: March 11, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–05785 Filed 3–14–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0356]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Designation of New Animal Drugs for Minor Use or Minor Species—Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Designation of New Animal Drugs for Minor Use or Minor Species (MUMS)—Final Rule'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 11, 2013, the Agency submitted a proposed collection of information entitled ''Designation of New Animal Drugs for Minor Use or Minor Species (MUMS)—Final Rule'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0605. The approval expires on February 28, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 12, 2014.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2014–05773 Filed 3–14–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0182]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Procedures for the Safe Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Procedures for the Safe Processing and Importing of Fish and Fishery Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On November 25, 2013, the Agency submitted a proposed collection of information entitled ''Procedures for the Safe Processing and Importing of Fish and Fishery Products'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0354. The approval expires on February 28, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 12, 2014.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2014–05775 Filed 3–14–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0593]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On July 16, 2013, the Agency submitted a proposed collection of information entitled ''Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0761. The approval expires on January 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 11, 2014.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2014–05767 Filed 3–14–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health

Dates and Times: April 8, 2014, 8:00 a.m. to 5:00 p.m. April 9, 2014, 8:00 a.m. to 5:00 p.m.

Place: Health Resources and Services Administration, 5600 Fishers Lane, Room 14–09, Rockville, Maryland 20857, Telephone: 301–594–0367, Fax: 301–443–9477.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migratory and seasonal agricultural workers and their families, and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on agricultural worker issues, including the status of agricultural worker health at the local and national levels.

Agenda items are subject to change as priorities indicate.

FOR FURTHER INFORMATION CONTACT: Gladys Cate, Office of National Assistance and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 6–57, Maryland 20857; telephone (301) 594–0367.

Dated: March 11, 2014.

Jackie Painter,

Deputy Director, Division of Policy and Information Coordination.

[FR Doc. 2014–05770 Filed 3–14–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0240]

Draft Revisions to the Marine Safety Manual, Volume III, Chapters 20–26

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of availability with request for comments.

SUMMARY: This is a supplemental notice to the August 9, 2013 request for comments on the draft changes to the Marine Safety Manual (MSM), Volume III, Marine Industry Personnel. The draft revision will be available in the docket for this notice. The primary reasons for this supplemental notice are to announce the incorporation in Volume III of the 2010 amendments to the STCW Convention, and to address the public comments received from the initial solicitation as well as input from the Merchant Marine Personnel Advisory Committee. Additionally, chapters 20 through 26 of Volume III have been reformatted, and are now presented as Volume III Part B, chapters 1 through 7. In the draft revision, these proposed revisions since the initial request for comments, including other changes necessary to reorganize and clarify Volume III, are highlighted in yellow. The Coast Guard will consider comments on this draft revision before issuing a final version of this manual.

DATES: Documents discussed in this notice should be available in the online docket within three business days of today's publication. Comments and related material must either be submitted to the online docket via *http://www.regulations.gov* or be received by the Coast Guard on or before May 16, 2014.

ADDRESSES: To view the documents mentioned in this notice, go to *http://www.regulations.gov* and use ''USCG–2013–0240'' as your search term. Locate this notice in the search results, and use the filters on the left side of the page to locate specific documents by type. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Corydon Heard, Office of Commercial Vessel Compliance, U.S. Coast Guard; telephone 202–372–1208, email *Corydon.F.Heard@uscg.mil*. If you have questions on viewing material in the docket, call Docket Operations at 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Volume III of the Marine Safety Manual (MSM) provides information and interpretations on international conventions and U.S. statutory and regulatory issues relating to marine industry personnel. The last revisions to Volume III of the MSM were released on May 27, 1999. This supplemental notice announces updates to portions of legacy chapters 20 through 26.

On August 9, 2013, the Coast Guard published a notice in the **Federal Register** announcing the availability of a draft update to MSM Volume III and requested public comments on the draft (*See* 78 FR 48696). Specifically, the substantive changes announced in that notice included: (1) updated provisions for vessel manning, including guidance for the issuing of safe manning documents; (2) clarified roles, responsibilities, and facilitation of communications with the appropriate offices at Coast Guard Headquarters in alignment with current Coast Guard organization; and (3) revised discussion on the impact of multiple international standards, including the Officer's Competency Certificates Convention (OCCC) 1936, the International Convention for Safety of Life at Sea (SOLAS), the Global Maritime Distress and Safety System (GMDSS), and the Principles of Minimum Safe Manning (IMO Resolution A.1047(27)). Additionally, the draft clarified the applicability of tonnage measurement systems to U.S. flag vessels, and included changes resulting from the consolidation of merchant mariner qualification credentials, including the removal of references to the operated uninspected towing vessel endorsement.

We received fifteen public comment responses to the August 9, 2013 **Federal Register** notice. These comment responses contained a total of approximately 130 specific recommendations, suggestions, and other comments. We have created a document that provides a summary of each comment and the corresponding Coast Guard response, as well as internal Coast Guard comments and changes made to incorporate the STCW Final Rule. A copy of this public comment matrix is available for viewing in the public docket for this notice. For more detailed information, please consult the actual public comment letters in the docket. You may access the docket going to *http://www.regulations.gov*, using ''USCG–2013–0240'' as your search term, and following the instructions in the **ADDRESSES** section above.

The basic ideas and principles encompassed in the initial draft change remain. Some commenters raised concerns and objections over several proposed revisions to the MSM. In response to these comments, the Coast Guard has made some additional

revisions. The Coast Guard notes, however, that the MSM (and any revisions made to the MSM) reflect current law and regulation and are intended to provide guidance and information to marine industry personnel. A brief discussion of the most important changes is included below. For a more in-depth discussion of the individual comments submitted, please visit the docket for this notice to view submitted comments and the public comment matrix.

(1) We received several comments on what was generally perceived to be an increase in vessel manning, beyond that required by law or regulation. This was not the intention of this change and these sections have been clarified.

(2) Several commenters expressed concern over how an owner's decision to increase manning may be perceived by the Coast Guard and that the guidance provided did not adequately address when manning would warrant an additional review and modifications. To address this concern, these sections have been revised to focus on watchkeeping provisions, rest requirements, and the performance of maintenance.

(3) Other commenters suggested that certain tables and scales be deleted or revised in their entirety and that the tables for uninspected towing vessels be replaced with those recommended by Towing Vessel Safety Advisory Committee (TSAC). We disagree. Although certain tables have been amended in response to various comments, they reflect the current laws and regulations pertaining to the manning levels for various vessel types, including uninspected towing vessels. The Coast Guard has engaged with TSAC to develop sample manning scales, however this tasking and recommendation pertains to inspected towing vessels, in preparation for future regulation. Once finalized, the TSAC recommendation will be taken under consideration for future inclusion in MSM Volume III.

(4) A number of commenters urged the Coast Guard to consider, and include in this revision, the final agency action on pending appeals regarding when mariner credentials are required for persons in addition to the crew. We disagree. Decisions on appeal impacting requirements for certain persons in addition to the crew are being evaluated and will be addressed in the future.

(5) Multiple commenters noted that although the Coast Guard usually discusses manning changes with management, specific language should be added to that end. We agree and revisions have been incorporated to specifically mention the master as well as to include provisions for manning modifications to be discussed with the owner/operator.

Additional substantive revisions include: (1) the consolidation of existing Coast Guard Policy Letters into the Manual; (2) context on the allowable employment and conditions of a two-watch system for specific vessel types; and (3) policy updates reflecting the implementation of the 2010 amendments to the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW). These revisions are presented in a new format, where MSM Volume III has been split into two distinct parts; Part A, Mariner Credentialing (Chapters 1–19) and Part B, Vessel Manning (legacy Chapters 20–26 are now Chapters 1–7).

It should be noted that the proposed revisions in this draft change are not intended to preempt or take the place of separate policy initiatives regarding specific decisions on appeal or future regulations. Future changes to the MSM may be released if the Coast Guard promulgates new regulations or appeal decisions, which may affect the guidance and information contained within the MSM.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: March 10, 2014.

Jonathan C. Burton,

Captain, U.S. Coast Guard, Director, Inspections and Compliance.

[FR Doc. 2014–05725 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0043; OMB No. 1660–0002]

Agency Information Collection Activities: Proposed Collection; Comment Request; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Disaster Assistance Registration process.

DATES: Comments must be submitted on or before May 16, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0043. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Elizabeth McDowell, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686–3630 for further information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov..*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288) (the Stafford Act), as amended, is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals who apply for disaster assistance benefits in the event of a federally declared disaster. Regulations in title 44 of the Code of Federal Regulations (CFR), Subpart D, ''Federal Assistance to Individuals and Households,'' implement the policy and procedures set forth in section 408 of the Stafford Act, 42 U.S.C. 5174, as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, damage, necessary expenses, and serious needs

which are not covered through other means.

Individuals and households may apply for assistance under the Individuals and Households program in person, via telephone or internet. FEMA utilizes paper forms 009–0–1 (English) Disaster Assistance Registration or FEMA Form 009–0–2 (Spanish), Solicitud/Registro Para Asistencia De Resastre to register individuals.

FEMA provides direct assistance to eligible applicants pursuant to the requirements in 44 CFR 206.117. To receive direct assistance for temporary housing (e.g., mobile home or other manufactured housing unit) from FEMA, the applicant is required to acknowledge and accept the conditions for occupying government property. The applicant is also required to acknowledge that he or she has been informed of the conditions for continued direct housing assistance. To accomplish these acknowledgments and notifications, FEMA uses the applicant's household composition data in National Emergency Management Information System to prepare a Manufactured Housing Unit Revocable License and Receipt for Government Property FEMA Form 009–0–5, or Las Casas Manufacturadas Unidad Licencia Revocable y Recibo de la Propiedad del Gobierno FEMA Form 009–0–6.

Federal public benefits are provided to U.S. citizens, non-citizen nationals, or qualified aliens. A parent or guardian of a minor child may be eligible for disaster assistance if, the minor child is a U.S. citizen, Non-citizen national or qualified alien and the minor child lives with the parent or guardian. (*See* 8 U.S.C. 1601–1646).

By signing FEMA Forms 009–0–3, Declaration and Release or 009–0–4, Declaración Y Autorización an applicant or a member of the applicant's household is attesting to being a U.S. citizen, non-citizen national or qualified alien. A parent or guardian of a minor child signing FEMA Forms 009–0–3, Declaration and Release or 009–0–4, Declaración Y Autorización is attesting that the minor child is a U.S. citizen, non-citizen national or qualified alien.

Collection of Information

Title: Disaster Assistance Registration.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0002.

FEMA Forms: FEMA Form 009–0–1T (English) Tele-Registration, Disaster Assistance Registration; FEMA Form 009–0–1Int (English) Internet, Disaster Assistance Registration; FEMA Form 009–0–2Int (Spanish) Internet, Registro Para Asistencia De Desastre; FEMA Form 009–0–1 (English) Paper Application/Disaster Assistance Registration; FEMA Form 009–0–2 (Spanish), Solicitud en Papel/Registro Para Asistencia De Desastre; FEMA Form 009–0–1S (English) Smartphone, Disaster Assistance Registration; FEMA Form 009–0–2S (Spanish) Smartphone, Registro Para Asistencia De Desastre; FEMA Form 009–0–3 (English), Declaration and Release; FEMA Form 009–0–4 (Spanish), Declaración Y Autorización; FEMA Form 009–0–5 (English), Manufactured Housing Unit Revocable License and Receipt for Government Property; FEMA Form 009–0–6 (Spanish), Las Casas Manufacturadas Unidad Licencia Revocable y Recibo de la Propiedad del Gobierno.

Abstract: The various forms in this collection are used to collect pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs that they are unable to meet through other means.

Affected Public: Individuals or Households.

Number of Respondents: 3,264,753.

Number of Responses: 3,264,753.

Estimated Total Annual Burden Hours: 628,036 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households.	Tele-registration Application for Disaster Assistance/(English) FEMA Form 009–0–1T.	1,151,255	1	1,151,255	0.3 (18 mins.)	345,377	$30.66	$10,589,258
Individuals or Households.	Internet application for Disaster Assistance/(English and Spanish) FEMA Forms 009–0–1Int and 009–0–02Int.	323,040	1	323,040	0.3 (18 mins.)	96,912	30.66	2,971,321.90
Individuals or Households.	Paper Application for Disaster Assistance/(English and Spanish) FEMA Forms 009–0–1 and 009–0–2.	51,549	1	51,549	0.3 (18 mins.)	15,465	30.66	474,156.90
Individuals or Households.	Smartphone Application for Disaster Assistance/(English and Spanish) FEMA Forms 009–0–1S and 009–0–2S.	192,447	1	192,447	0.3 (18 mins.)	57,734	30.66	1,770,124.40
Individuals or Households.	Declaration and Release (English and Spanish)/FEMA Forms 009–0–3 and 009–0–4.	1,099,706	1	1,099,706	.033 (2 mins.)	36,657	30.66	1,123,903.60
Individuals or Households.	Manufactured Housing Unit Revocable License and Receipt for Government Property (English and Spanish) FEMA Forms 009–0–5 and 009–0–6.	17,183	1	17,183	0.25 (15 mins.)	4,296	30.66	131,715.36
Individuals or Households.	Request for Information (RFI), English and Spanish.	429,573	1	429,573	0.166666 (10 mins.)	71,595	30.66	2,195,102.70
Total	.....	3,264,753	.....	3,264,753	.....	628,036	.....	19,255,579

• **Note:** The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $19,255,579. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or

capital costs. The cost to the Federal Government is $15,618,762.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 11, 2014.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–05802 Filed 3–14–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3368–EM; Docket ID FEMA–2014–0003]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3368–EM), dated February 11, 2014, and related determinations.

DATES: *Effective Date:* February 11, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 11, 2014, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia resulting from a severe winter storm beginning on February 10, 2014, and continuing are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Georgia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Georgia have been designated as adversely affected by this declared emergency:

Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clarke, Cobb, Dade, Dawson, DeKalb, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Jackson, Lincoln, Lumpkin, Madison, Murray, Oconee, Oglethorpe, Paulding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, Walton, White, Whitfield, and Wilkes Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–05796 Filed 3–14–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1350).	City of Gulf Shores (13–04–3816P).	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	December 6, 2013	015005
Baldwin (FEMA Docket No.: B–1350).	City of Orange Beach (13–04–5100P).	The Honorable Anthony T. Kennon, Mayor, City of Orange Beach, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	Community Development Department, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	December 6, 2013	015011
Arizona:					
Maricopa (FEMA Docket No.: B–1350).	City of Glendale (13–09–0441P).	The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	November 1, 2013	040045
Maricopa (FEMA Docket No.: B–1350).	City of Peoria (13–09–0441P).	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	November 1, 2013	040050
Maricopa (FEMA Docket No.: B–1350).	Unincorporated areas of Maricopa County (13–09–0441P).	The Honorable Andy Kunasek Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	November 1, 2013	040037
Pima (FEMA Docket No.: B–1350).	City of Tucson (13–09–1006P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda, 10th Floor, Tucson, AZ 85701.	Planning and Development Services Division, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	November 28, 2013	040076
Pima (FEMA Docket No.: B–1350).	Unincorporated areas of Pima County (13–09–1006P).	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	November 28, 2013	040073
California:					
Kern (FEMA Docket No.: B–1350).	City of Delano (13–09–2039P).	The Honorable Joe Aguirre, Mayor, City of Delano, P.O. Box 3010, Delano, CA 93216.	Community Development Department, 1015 11th Avenue, Delano, CA 93215.	December 6, 2013	060078
Kern (FEMA Docket No.: B–1350).	Unincorporated areas of Kern County (13–09–0488P).	The Honorable Mike Maggard, Chairman, Kern County Board of Supervisors, 1115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301.	Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, CA 93301.	November 28, 2013	060075
Los Angeles (FEMA Docket No.: B–1350).	City of Santa Clarita (13–09–1601P).	The Honorable Bob Kellar, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Santa Clarita, CA 91355.	Public Works Department, 23920 Valencia Boulevard, Santa Clarita, CA 91355.	December 6, 2013	060729
Merced (FEMA Docket No.: B–1350).	City of Merced (13–09–0938P).	The Honorable Stan Thurston, Mayor, City of Merced, 678 West 18th Street, Merced, CA 95340.	City Hall, 678 West 18th Street, Merced, CA 95340.	October 31, 2013	060191
Placer (FEMA Docket No.: B–1350).	City of Rocklin (13–09–2062P).	The Honorable Diana Ruslin, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, CA 95677.	Engineering Department, 3970 Rocklin Road, Rocklin, CA 95677.	December 13, 2013	060242
Placer (FEMA Docket No.: B–1350).	Town of Loomis (13–09–2062P).	The Honorable Walt Scherer, Mayor, Town of Loomis, 3665 Taylor Road, Loomis, CA 95650.	Public Works and Engineering Department, 3665 Taylor Road, Loomis, CA 95650.	December 13, 2013	060721
Riverside (FEMA Docket No.: B–1350).	Unincorporated areas of Riverside County (13–09–2159P).	The Honorable John J. Benoit, Chairman, Riverside County Board of Supervisors, P.O. Box 1647, Riverside, CA 92502.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92502.	November 28, 2013	060245

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
San Bernardino (FEMA Docket No.: B–1350).	City of San Bernardino (13–09–1112P).	The Honorable Patrick J. Morris, Mayor, City of San Bernardino, 300 North D Street, 6th Floor, San Bernardino, CA 92418.	Water Department, 399 Chandler Place, San Bernardino, CA 92408.	November 29, 2013	060281
San Bernardino (FEMA Docket No.: B–1350).	Unincorporated areas of San Bernardino County (13–09–1112P).	The Honorable Janice Rutherford Chair, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works Department, 825 East 3rd Street, San Bernardino, CA 92415.	November 29, 2013	060270
Colorado:					
Adams (FEMA Docket No.: B–1350).	City of Thornton (13–08–0534P).	The Honorable Heidi Williams, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	November 29, 2013	080007
Adams (FEMA Docket No.: B–1350).	Unincorporated areas of Adams County (13–08–0534P).	The Honorable Eva J. Henry, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Suite C5000A, Brighton, CO 80601.	Adams County Public Works Department, 4430 South Adams County Parkway, Suite W2123, Brighton, CO 80601.	November 29, 2013	080001
Arapahoe (FEMA Docket No.: B–1350).	City of Centennial (13–08–0357P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112.	November 8, 2013	080315
Arapahoe (FEMA Docket No.: B–1350).	Unincorporated areas of Arapahoe County (13–08–0357P).	The Honorable Rod Bockenfeld, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	November 8, 2013	080011
Eagle (FEMA Docket No.: B–1350).	Unincorporated areas of Eagle County (13–08–0339P).	The Honorable Jon Stavney, Chairman, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	October 18, 2013	080051
Grand (FEMA Docket No.: B–1350).	Town of Winter Park (13–08–0301P).	The Honorable Jim Myers, Mayor, Town of Winter Park, P.O. Box 3327, Winter Park, CO 80482.	Town Hall, 50 Vasquez Road, Winter Park, CO 80482.	December 13, 2013	080305
Prowers (FEMA Docket No.: B–1350).	Unincorporated areas of Prowers County (13–08–0049P).	The Honorable Joe D. Marble, Chairman, Prowers County Board of Commissioners, 301 South Main Street, Lamar, CO 81052.	Prowers County Land Use Administrator, 301 South Main Street, Lamar, CO 81052.	November 18, 2013	080272
Weld (FEMA Docket No.: B–1350).	Unincorporated areas of Weld County (12–08–0826P).	The Honorable William Garcia, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greely, CO 80632.	Weld County Public Works Department, 1111 H Street, Greely, CO 80632.	December 16, 2013	080266
Florida:					
Broward (FEMA Docket No.: B–1350).	City of Hollywood (13–04–6046P).	The Honorable Peter J.M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.	December 20, 2013	125113
Escambia (FEMA Docket No.: B–1350).	Pensacola Beach-Santa Rosa Island Authority (13–04–3378P).	The Honorable Thomas A. Campanella, DDS Chairman, Pensacola Beach-Santa Rosa Island Authority Board of Commissioners, P.O. Box 1208, Pensacola Beach, FL 32562.	Pensacola Beach-Santa Rosa Island Authority Development Department, 1 Via De Luna Drive, Pensacola Beach, FL 32561.	November 29, 2013	125138
Escambia (FEMA Docket No.: B–1350).	Unincorporated areas Escambia County (13–04–5544P).	The Honorable Gene M. Valentino, Chairman, Escambia County Board of Commissioners, 221 Palafox Place, Suite 400, Pensacola, FL 32502.	Escambia County Department of Planning and Zoning, 3363 West Park Place, Pensacola, FL 32505.	December 6, 2013	120080
Monroe (FEMA Docket No.: B–1350).	Unincorporated areas of Monroe County (13–04–3827P).	The Honorable George Neugent, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	November 7, 2013	125129
Monroe (FEMA Docket No.: B–1350).	Unincorporated areas of Monroe County (13–04–4343P).	The Honorable George Neugent, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	November 12, 2013	125129
Monroe (FEMA Docket No.: B–1350).	Village of Islamorada (13–04–4008P).	The Honorable Ken Philipson, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Village Hall, 87000 Overseas Highway, Islamorada, FL 33036.	November 22, 2013	120424
Orange (FEMA Docket No.: B–1350).	City of Orlando (12–04–5226P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	November 29, 2013	120186
Orange (FEMA Docket No.: B–1350).	City of Orlando (12–04–1624P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	November 8, 2013	120186
Osceola (FEMA Docket No.: B–1350).	Unincorporated areas of Osceola County (13–04–2911P).	The Honorable Frank Attkisson, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Section, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	December 13, 2013	120189
Pinellas (FEMA Docket No.: B–1350).	City of Treasure Island (13–04–4871P).	The Honorable Robert Minning, Mayor, City of Treasure Island, 120 108th Avenue, Treasure Island, FL 33706.	City Hall Building Department, 120 108th Avenue, Treasure Island, FL 33706.	November 28, 2013	125153
Sarasota (FEMA Docket No.: B–1350).	Unincorporated areas of Sarasota County (13–04–2683P).	The Honorable Carolyn Mason, Chair, Sarasota County Commission, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Operations Center, 1001 Sarasota Center Boulevard, Sarasota, FL 34236.	November 8, 2013	125144

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
St. Johns (FEMA Docket No.: B–1350).	Unincorporated areas of St. Johns County (13–04–0459P).	The Honorable Jay Morris, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Growth Management Department, 4040 Lewis Speedway St., Augustine, FL 32084.	December 16, 2013	125147
St. Johns (FEMA Docket No.: B–1350).	Unincorporated areas of St. Johns County (13–04–3658P).	The Honorable Jay Morris, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View St., Augustine, FL 32084.	St. Johns County Growth Management Department, 4040 Lewis Speedway St., Augustine, FL 32084.	December 13, 2013	125147
Georgia: Columbia (FEMA Docket No.: B–1350).	Unincorporated areas of Columbia County (13–04–3713P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Department of Planning and Engineering, P.O. Box 498, Evans, GA 30809.	December 5, 2013	130059
Hawaii: Hawaii (FEMA Docket No.: B–1350).	Hawaii County (13–09–2122P).	The Honorable William P. Kenoi, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	Hawaii County Public Works Department, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	December 16, 2013	155166
Kentucky: Jefferson (FEMA Docket No.: B–1350).	Louisville-Jefferson County Metro Government (13–04–4613P).	The Honorable Greg Fisher, Mayor, Louisville-Jefferson County Metro Government, 527 West Jefferson Street, Louisville, KY 40202.	Louisville-Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	December 6, 2013	210120
Montana: Lincoln (FEMA Docket No.: B–1350).	Unincorporated areas of Lincoln County (13–08–0330P).	The Honorable Tony Berget, Chairman, Lincoln County Board of Commissioners, 512 California Avenue, Libby, MT 59923.	Lincoln County Emergency Management Department, 925 East Spruce Street, Libby, MT 59923.	December 9, 2013	300157
Nevada:					
Clark (FEMA Docket No.: B–1350).	City of Henderson (13–09–1602P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, Henderson City Hall, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	November 1, 2013	320005
Clark (FEMA Docket No.: B–1350).	City of Henderson (13–09–1966P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, Henderson City Hall, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	November 29, 2013	320005
North Carolina:					
Buncombe (FEMA Docket No.: B–1350).	City of Asheville (13–04–4986P).	The Honorable Terry M. Bellamy, Mayor, City of Asheville, P.O. Box 7148, Asheville, NC 28802.	Development Services Department, 161 South Charlotte Street, Asheville, NC 28801.	November 12, 2013	370032
Davie (FEMA Docket No.: B–1350).	Unincorporated areas of Davie County (12–04–4913P).	The Honorable Beth Dirks, Davie County Manager, 123 South Main Street, 2nd Floor, Mocksville, NC 27028.	Davie County Development Services Department, 298 East Depot Street, Suite 100, Mocksville, NC 27028.	November 15, 2013	370308
Forsyth (FEMA Docket No.: B–1350).	City of Winston-Salem (11–04–3398P).	The Honorable Allen Joines, Mayor, City of Winston-Salem, 101 North Main Street, Suite 150, Winston-Salem, NC 27101.	Inspections Department, 100 East 1st Street, Suite 328, Winston-Salem, NC 27101.	October 15, 2013	375360
Wake (FEMA Docket No.: B–1350).	Town of Cary (12–04–3992P).	The Honorable Harold Weinbrecht, Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	Stormwater Services Office, 316 North Academy Street, Cary, NC 27513.	November 7, 2013	370238
South Carolina: Horry (FEMA Docket No.: B–1350).	City of North Myrtle Beach (13–04–2856P).	The Honorable Marilyn Hatley, Mayor, City of North Myrtle Beach, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Planning and Development Department, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	November 29, 2013	450110
Washington: Spokane (FEMA Docket No.: B–1350).	City of Cheney (13–10–0843P).	The Honorable Tom Trulove, Mayor, City of Cheney, 609 2nd Street, Cheney, WA 99004.	Public Works Department, 112 Anderson Road, Cheney, WA 99004.	December 6, 2013	530175

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05733 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1401]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition,

the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before June 16, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1366, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Wicomico County, Maryland, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Fruitland	City Hall, 401 East Main Street, Fruitland, MD 21826.
City of Salisbury	City Hall, 125 North Division Street, Salisbury, MD 21801.
Town of Delmar	Town Hall, 100 South Pennsylvania Avenue, Delmar, MD 21875.
Town of Mardela Springs	Town Hall, 201 Station Street, Mardela Springs, MD 21837.
Town of Sharptown	Town Hall, 401 Main Street, Sharptown, MD 21861.
Town of Willards	Town Hall, 7360 Main Street, Willards, MD 21874.
Unincorporated Areas of Wicomico County	Wicomico County Government Office Building, 125 North Division Street, Room 201, Salisbury, MD 21801.
Accomack County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Belle Haven	Town Office, 15293 Kings Street, Belle Haven, VA 23306.
Town of Chincoteague	Town Hall, 6150 Community Drive, Chincoteague, VA 23336.
Town of Onancock	Town Hall, 15 North Street, Onancock, VA 23417.
Town of Saxis	Town Hall, 8334 Freeschool Lane, Saxis, VA 23427.
Town of Tangier	Town Hall, 4301 Joshua Thomas Lane, Tangier, VA 23440.
Town of Wachapreague	Town Hall, 6 Main Street, Wachapreague, VA 23480.
Unincorporated Areas of Accomack County	Accomack County Department of Building, Planning and Zoning, 23296 Courthouse Avenue, Room 105, Accomac, VA 23301.
City of Hopewell, Virginia (Independent City)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Hopewell	City Hall, 300 North Main Street, Hopewell, VA 23860.

Community	Community map repository address
City of Suffolk, Virginia (Independent City)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Suffolk	City Hall, 441 Market Street, Suffolk, VA 23434.
King William County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of West Point	Town Hall, 329 Sixth Street, West Point, VA 23181.
Unincorporated Areas of King William County	King William County Administrator's Office, 180 Horse Landing Road, King William, VA 23086.
Middlesex County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Urbanna	Town Office, 45 Cross Street, Urbanna, VA 23175.
Unincorporated Areas of Middlesex County	Middlesex County Building Department, 877 General Puller Highway, Saluda, VA 23149.
Prince George County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Prince George County	Prince George County Planning and Zoning Office, 6602 Courts Drive, 1st Floor, Prince George, VA 23875.
Prince William County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Dumfries	Town Hall, Zoning Administrator's Office, 101 South Main Street, Dumfries, VA 22026.
Town of Quantico	Town Hall, 337 Fifth Street, Quantico, VA 22134.
Unincorporated Areas of Prince William County	Prince William County Department of Public Works, Watershed Management Branch, 5 County Complex Court, Prince William, VA 22192.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05729 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1402]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information Exchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Louisiana:						
Livingston	Unincorporated areas of Livingston Parish (13–06–4605P).	The Honorable Layton Ricks, Livingston Parish President, 20399 Government Road, Livingston, LA 70754.	Livingston Parish Building and Permits Department, 20399 Government Road, Livingston, LA 70754.	*http://www.msc.fema.gov/lomc*	April 11, 2014	220113
New Mexico:						
Bernalillo	Unincorporated areas of Bernalillo County, (12–06–4069P).	The Honorable Maggie Hart Stebbins, Chairman, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc*	April 10, 2014	350001
New York:						
Dutchess	Town of Fishkill, (13–02–1873P).	The Honorable Robert LaColla, Supervisor, Town of Fishkill, 807 Route 52, Fishkill, NY 12524.	Town Hall, 807 Route 52, Fishkill, NY 12524.	*http://www.msc.fema.gov/lomc*	April 2, 2014	361337
Dutchess	Town of Wappinger, (13–02–1873P).	The Honorable Barbara A. Gutzler, Supervisor, Town of Wappinger, 20 Middlebush Road, Wappingers Falls, NY 12590.	Wappinger Town Hall, 20 Middlebush Road, Wappingers Falls, NY 12590.	*http://www.msc.fema.gov/lomc*	April 2, 2014	361387
Oklahoma:						
Tulsa	City of Tulsa, (13–06–2978P).	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	Engineering Services, 2317 South Jackson Avenue, Room S–312, Tulsa, OK 74107.	*http://www.msc.fema.gov/lomc*	April 7, 2014	405381
Pennsylvania:						
Dauphin	Township of Lower Paxton, (13–03–2589P).	The Honorable William B. Hawk, Chairman, Township of Lower Paxton Board of Supervisors, 425 Prince Street, Harrisburg, PA 17109.	Lower Paxton Township Hall, 425 Prince Street, Harrisburg, PA 17109.	*http://www.msc.fema.gov/lomc*	April 2, 2014	420384
Texas:						
Coleman	City of Coleman, (13–06–1326P).	The Honorable Kay Joffrion, Mayor, City of Coleman, P.O. Box 592, Coleman, TX 76834.	200 West Liveoak Street, Coleman, TX 76834.	*http://www.msc.fema.gov/lomc*	April 17, 2014	480129
Williamson	City of Cedar Park, (13–06–2364P).	The Honorable Matt Powell, Mayor, City of Cedar Park, 450 Cypress Creek Road, Building 4, Cedar Park, TX 78613.	Engineering Department, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	*http://www.msc.fema.gov/lomc*	April 10, 2014	481282
Virginia:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Fairfax	Unincorporated areas of Fairfax County, (13–03–2194P).	Mr. Edward L. Long, Jr., Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County, Stormwater Planning Division, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*http://www.msc.fema.gov/lomc*	April 7, 2014	515525
Henrico	Unincorporated areas of Henrico County, (13–03–1863P).	Mr. John A. Vithoulkas, Henrico County Manager, P.O. Box 90775, Henrico, VA 23273.	Henrico County Government Center, 4301 East Parham Road, Henrico, VA 23228.	*http://www.msc.fema.gov/lomc*	April 7, 2014	510077
James City County.	Unincorporated areas of James City County (12–03–2459P).	Mr. Robert C. Middaugh, James City County Administrator, P.O. Box 8784, Williamsburg, VA 23187.	James City County, 101 Mounts Bay Road, Building A, Williamsburg, VA 23185.	*http://www.msc.fema.gov/lomc*	March 6, 2014	510201
West Virginia:						
Fayette	City of Montgomery, (13–03–2527P).	The Honorable James F. Higgins, Jr., Mayor, City of Montgomery, 706 3rd Avenue, Montgomery, WV 25136.	City Hall, 706 3rd Avenue, Montgomery, WV 25136.	*http://www.msc.fema.gov/lomc*	April 11, 2014	540029
Fayette	Town of Gauley Bridge, (13–03–2527P).	The Honorable John S. Kauff, Mayor, Town of Gauley Bridge, P.O. Box 490, Gauley Bridge, WV 25085.	Town Hall, 278 Railroad Street, Gauley Bridge, WV 25085.	*http://www.msc.fema.gov/lomc*	April 11, 2014	540294
Fayette	Town of Smithers, (13–03–2527P).	The Honorable Thomas Skaggs, Mayor, Town of Smithers, P.O. Box 489, Smithers, WV 25186.	Town Hall, 175 Michigan Avenue, Smithers, WV 25186.	*http://www.msc.fema.gov/lomc*	April 11, 2014	540033
Fayette	Unincorporated areas of Fayette County, (13–03–2527P).	The Honorable Matthew D. Wender, President, Fayette County Board of Commissioners, P.O. Box 307, Fayetteville, WV 25840.	Fayette County Safety Department, 100 Court Street, Fayetteville, WV 25840.	*http://www.msc.fema.gov/lomc*	April 11, 2014	540026

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05713 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1347]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On September 23, 2013, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 78 FR 58338. The table provided here represents the proposed flood hazard determinations and communities affected for Navajo County, Arizona, and Incorporated Areas.

DATES: Comments are to be submitted on or before June 16, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1347, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium

rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf*.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 78 FR 58338 in the September 23, 2013, issue of the **Federal Register**, FEMA published a table titled Navajo County, Arizona, and Incorporated Areas. This table contained inaccurate information as to the community map repository for the City of Show Low, the Town of Pinetop-Lakeside, and the Unincorporated Areas of Navajo County featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

Community	Community map repository address
Navajo County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Holbrook	465 1st Avenue, Holbrook, AZ 86025.
City of Show Low	180 North 9th Street, Show Low, AZ 85901.
Town of Pinetop-Lakeside	1360 North Niels Hansen Lane, Lakeside, AZ 85929.
Unincorporated Areas of Navajo County	Navajo County Flood Control District, 100 East Code Talkers Drive, Holbrook, AZ 86025.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 7, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–05795 Filed 3–14–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0049]

Recovery Policy RP9525.4, Emergency Medical Care and Medical Evacuations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: This document provides notice of the availability of the final Recovery Policy RP9525.4, *Emergency Medical Care and Medical Evacuations.* The Federal Emergency Management Agency (FEMA) published a notice of availability and request for comment for the proposed policy on August 13, 2010 at 75 FR 49507.

DATES: This policy is effective February 3, 2014.

ADDRESSES: This final policy is available online at *http://www.regulations.gov* and under docket ID FEMA–2010–0049 and on FEMA's Web site at *http://www.fema.gov.* The proposed and final policy, all related **Federal Register** Notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under docket ID FEMA–2010–0049. You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 8NE, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: William Roche, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–3834, or via email at *William.Roche@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: This final policy identifies the extraordinary emergency medical care expenses that are eligible for reimbursement under the Category B, Emergency Protective Measures provisions of the Public Assistance Program following an emergency or major disaster declaration. This updated policy in section VIII.B(1)(c) adds labor costs for personnel activated and deployed to support the performance of eligible emergency work; in section VIII.B(1)(f) additional language is included to clarify the intent of providing post-disaster vaccinations; labor costs for permanent employees that are activated and deployed to support patient evacuation is an eligible expense in section VIII.C(1)(c); and section VIII.F addresses Mutual Aid and removes reference to public or private nonprofit providers working within their jurisdiction as ineligible mutual aid providers. Section VII.C(2)(c) which stated increased operating costs are ineligible and costs incurred in preparation for an increased patient load from an emergency or disaster are ineligible in section VII.F were removed from the previous version of the policy.

FEMA received three comments on the proposed policy one of which lead to a change to the final policy. The following sentence in Section VIII.F. of the draft policy was removed: ''Public or private nonprofit medical service providers working within their jurisdiction do not qualify as mutual aid providers under DAP9523.6''.

This final policy does not have the force or effect of law.

Authority: 42 U.S.C. 5121–5207, and implementing regulations of 44 CFR part 206.

David J. Kaufman,

Associate Administrator, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2014–05727 Filed 3–14–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–28]

30-Day Notice of Proposed Information Collection: Congressional Earmark Grants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 16, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 6, 2014.

A. Overview of Information Collection

Title of Information Collection: Congressional Earmark Grants.

OMB Approval Number: 2506–0179.

Type of Request: Extension of a currently approved collection.

Form Number: SF–424; SF–LLL; SF–1199A; HUD–27054; SF–425; HUD 27053, HUD–27056.

Description of the need for the information and proposed use: HUD's Congressional Grants Division and its Environmental Officers in the field use this information to make funds available to entities directed to receive funds appropriated by Congress. This information is used to collect, receive, review and monitor program activities through applications, semi-annual reports, and close out reports. The information that is collected is used to assess performance. Grantees are units of state and local government, nonprofits and Indian tribes. Respondents are initially identified by congress and generally fall into two categories: Economic Development Initiative—Special Project (EDI—SP) grantees and Neighborhood Initiative (NI) grantees. The agency has used the application, semi-annual reports and close out reports to track grantee performance in the implementation of approved projects.

Estimated Number of Respondents: 1400.

Estimated Number of Responses: 2800.

Frequency of Response: 2.

Average Hours per Response: .5.

Total Estimated Burdens: 1400.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
	1400	2	2800	.5	1400	33.50	$46,900
Total							

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: March 12, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–05805 Filed 3–14–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5711–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2013

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2013, and ending on December 31, 2013.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and

for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2013.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2013 through December 31, 2013. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2013) before the next report is published (the first quarter of calendar year 2014), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 10, 2014.

Damon Y. Smith,

Acting General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2013 through December 31, 2013

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• **Regulation:** 24 CFR 58.22(a).

Project/Activity: The Texas Department of Housing and Community Affairs (TDHCA) requested a waiver of HUD's environmental regulations at 24 CFR 58.22(a), limitations on activities pending clearance, for land acquisition in La Feria, Texas. This project became subject to 24 CFR part 58 on March 1, 2012, when Sunrise Terrace L.P. applied for a $1,444,000 HOME loan through TDHCA as part of the project financing. Other funds were used to close the sale of the property on September 11, 2012, prior to obtaining HUD's approval of a Request for Release of Funds (RROF).

Nature of Requirement: Section 58.22 addresses limitations on activities pending clearance. Section 58.22(a) provides that neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 CFR 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in 24 CFR 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: December 20, 2013.

Reason Waived: It was determined that the project would further the HUD mission and would advance HUD program goals to develop viable, quality communities and affordable housing. It was further determined that the grantee unknowingly violated the regulation; no HUD funds were committed; and based on the environmental assessments and the HUD field inspection no adverse environmental impact resulted from the procedural error.

Contact: Nelson A. Rivera, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7248, Washington, DC 20410, telephone (202) 708–4225.

• **Regulation:** 24 CFR 58.22(a).

Project/Activity: The City of Coralville, IO requested a waiver of HUD's environmental regulations at 24 CFR 58.22(a), limitations on activities pending clearance, for the Cedar Rapids and Iowa City Railroad Bridge flood control project along the Iowa River. This project became subject to 24 CFR Part 58 when the City applied for a $2.5 million CDBG grant through the Iowa Economic Development Administration (IEDA) as part of the project financing. The U.S. Department of Commerce Economic Development Administration (EDA) funds were used to begin construction of the project in August 2012, including the portion to which CDBG funds were targeted, prior to completion of HUD's environmental review requirements.

Nature of Requirement: Section 58.22 addresses limitations on activities pending clearance. Section 58.22(a) provides that neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 CFR 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in 24 CFR 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: November 21, 2013.

Reason Waived: The flood control project furthers the HUD mission and advances HUD program goals to develop viable, quality communities by protecting businesses and residents from flooding; the grantee unknowingly violated the regulation; and based on the environmental assessments and the HUD field inspection no adverse environmental impact resulted from the procedural error.

Contact: Nelson A. Rivera, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7248, Washington, DC 20410, telephone (202) 708–4225.

• **Regulations:** 24 CFR 92.500 (d)(1)(B) and 24 CFR 92.500(d)(1)(C).

Project/Activity: Jefferson Parish Consortium, LA requested a waiver of 24 CFR 92.500(d)(1)(B) and 24 CFR 92.500(d)(1)(C) to provide additional time to commit and expend its annual allocation of HOME funds in order to facilitate the ongoing recovery from the devastation caused by Hurricane Isaac.

Nature of Requirements: 24 CFR 92.500 (d)(1)(B) requires a HOME participating jurisdiction to commit its annual allocation of HOME funds within 24 months after HUD notifies the participating jurisdiction that it has executed the HOME Investment Partnership Agreement. 24 CFR 92.500(d)(1)(C) requires a HOME participating jurisdiction to expend its annual allocation of HOME funds within five years after HUD notifies the participating jurisdiction that it has executed the HOME Investment Partnership Agreement.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: November 8, 2013.

Reasons Waived: The waivers were granted to ensure the community is able to retain the HOME Investment Partnership funds and has sufficient time to complete housing activities that are needed to address the damage caused by Hurricane Isaac. In 2012, the Consortium was awarded an additional $16,453,000 of Community Development Block Grant Disaster Relief funds. Consequently, the Consortium was required to commit and expend a large amount of funds in a short period of time.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• **Regulation:** 24 CFR 570.200(h).

Project/Activity: On December 13, 2013, HUD issued a CPD Notice implementing revised procedures to govern the submission and review of consolidated plans and action plans for FY 2014 funding prior to the enactment of a FY 2014 HUD appropriation bill. These procedures apply to any grantee whose program year start date for FY 2014 funding occurs during the period starting October 1, 2013, and ending August 16, 2014 or 60 days after HUD announcement of FY 2014 allocation amounts for CDBG, ESG, HOME and HOPWA formula funding (whichever comes first). Any grantee with an FY 2014 program year start date during the period starting October 1, 2013, and ending August 16, 2014 or 60 days after HUD announcement of FY 2014 allocation amounts (whichever comes first), is advised not to submit its consolidated plan/action plan until the FY 2014 formula allocations have been announced.

This waiver will apply to any Entitlement, Insular or Hawaii nonentitlement CDBG grantee whose program year start date for FY 2014 funding occurs during the period starting October 1, 2013, and ending August 16, 2014 or 60 days after HUD announcement of FY 2014 allocation amounts for formula program funding (whichever comes first). This waiver is available for use by any applicable CDBG grantee whose action plan submission is delayed past the normal submission date because of delayed enactment of FY 2014 appropriations for the Department. This waiver authority is only in effect until August 16, 2014.

Nature of Requirement: The Entitlement CDBG program regulations provide for situations in which a grantee may incur costs against its CDBG grant prior to the award of its grant from HUD. Under 24 CFR 570.200(h) of the regulations, the effective date of a grantee's grant agreement is either the grantee's program year start date or the date that the grantee's annual action plan is received by HUD, whichever is later. This waiver allows grantees to treat the effective date of the FY 2014 program year as the grantee's program year start date or the date that the grantee's annual action plan is received by HUD, whichever is earlier.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: December 13, 2013.

Reason Waived: Under the provisions of the Notice, a grantee's action plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. Lengthy delays in the receipt of annual appropriations by HUD, and implementation of the policy to delay submission of FY 2014 Action Plans, may have negative consequences for CDBG grantees that intend to incur eligible costs prior to the award of FY 2014 funding. Some activities might otherwise be interrupted while implementing these revised procedures. In addition, grantees might not otherwise be able to use CDBG funds for planning and administrative costs of administering their programs. In order to address communities' needs and to ensure that programs can continue without disturbance, this waiver will allow grantees to incur pre-award costs on a timetable comparable to that under which grantees have operated in past years.

Contact: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• **Regulation:** 24 CFR part 576.403(c).

Project/Activity: In response to a request from the City of Rockford, IL, Du Page County, IL, and the State of Illinois, HUD granted a limited waiver of § 576.403(c) to allow Prairie State Legal Services to provide legal services under the homelessness prevention component to program participants who want to stay in their units, even if the units do not meet the habitability standards. The limited waiver also allows those program participants receiving the legal services to receive ESG-funded case management, as required by § 576.401(d) and (e), even if their units do not meet the habitability standards. However, the limited waiver is contingent upon the commitment of the recipients, their subrecipient, Prairie State Legal Services, and the subrecipient(s) providing the required case management to work with the property owners to bring the units into compliance with the habitability standards or assist the program participants to move if the units are unsafe.

Nature of Requirement: The regulation at § 576.403(c) states that the recipient or subrecipient cannot use ESG funds to help a program participant remain in or move into housing that does not meet the ESG minimum habitability standards for permanent housing.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: November 29, 2013.

Reason Waived: HUD recognizes that in certain instances, the best way to help program participants avoid homelessness is to keep them in their housing until better housing can be located, or their existing housing can be brought up to code. Legal services provide an important resource for persons who are at risk of homelessness, who need immediate assistance to help them avoid moving to the streets or emergency shelters. In some instances, it is not feasible to inspect a unit to ensure that it meets the habitability standards prior to the provision of the legal services assistance necessary to prevent homelessness for the individual or family. Also in some cases, the habitability requirement actually prohibits eligible program participants from receiving the legal services that could assist them to make the unit habitable and stabilize them in their housing.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• **Regulations:** 24 CFR 5.801(c)(3), 202.5(g)(1), and 202.6(c)(2).

Program/Activity: Annual Recertifications and Renewal Fees

Nature of Requirement: HUD's regulations at 24 CFR 5.801(c)(3), 202.5(g)(1), and 202.6(c)(2) require Title I and Title II lenders and mortgagees to file their annual recertification package and annual renewal fees within 90 days of the end of their fiscal year.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 27, 2013.

Reason Waived: All FHA-approved lenders and mortgagees with a fiscal year end of December 31, 2013 or later must use the Lender Electronic Assessment Portal (LEAP) to complete the annual certification, submit financial reports and pay recertification fees, however, because LEAP recertification functionality will not be deployed until after March 31, 2014, lenders and mortgagees with a fiscal year end of December 31, 2013 will be unable to access LEAP within the required timeframe. Therefore, a waiver of the 90 day deadline for FHA-approved lenders and mortgagees with a fiscal year end of December 31, 2013, was necessary and the filing date was extended until 30 days after the deployment of LEAP recertification functionality.

Contact: Joy Hadley, Director of Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street SW., Room 3214, Washington, DC 20410, telephone (202) 708–1515.

• **Regulation:** Mortgagee Letter 2011–22.

Program/Activity: Certain FHA-Insured Condominiums

Nature of Requirement: HUD's Mortgagee Letter 2011–22 requires master/blanket hazard, flood, liability and other insurance requirements for Manufactured Housing Condominium Projects (MHCP), Detached Condominium Housing Projects (DCHP), and Common Interest Housing Development (CIHD).

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 27, 2013.

Reason Waived: The waiver of the master/blanket hazard, flood, liability and other insurance requirements contained in Mortgagee Letter 2011–22 was necessary because MHCPs, DCHPs, and CIHDs could not practicably satisfy these requirements. Therefore, it was determined that allowing the individual unit owner to obtain and maintain their own insurances should be allowed.

Contact: Joanne Kuczma, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410, telephone (202) 708–2121.

• **Regulation:** 24 CFR 219.220(b).

Project/Activity: Oak Creek Townhomes, FHA Project Number 013–030NI, Auburn, New York. The owners have requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan on this project due to their inability to repay the loan in full upon maturity.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2013.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan to allow the much needed preservation and moderate rehabilitation of the project. The project will be preserved as an affordable housing resource for an additional 32 years for the residents of Auburn.

Contact: Mark B. Van Kirk, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• **Regulation:** 24 CFR 219.220(b).

Project/Activity: Canaan Village Apartments, FHA Project Number 064–35452, Shreveport, Louisiana. The owner has requested to defer repayment of the Flexible Subsidy Operating Assistance Loan due to their inability to pay the loan in full upon maturity.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 29, 2013.

Reason Waived: Waiver of this regulation has been granted because the Owner has demonstrated that deferral of repayment of the Flexible Subsidy Operating Assistance Loan will allow the re-amortization of the loan and completion of much needed repairs at the project. Waiving the requirement will recapitalize the project and provide its long-term preservation as an affordable housing resource to 40 years.

Contact: Mark B. Van Kirk, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• **Regulation:** 24 CFR 219.220(b).

Project/Activity: Christ Church Apartments, FHA Project Number 083–44087, Lexington, Kentucky. The owner has requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan due to their inability to pay the loan in full upon maturity.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 7, 2013.

Reason Waived: It was determined that providing for waiver of this regulation would allow the owner to defer repayment of the Flexible Subsidy Operating Assistance Loan and preserve the project as affordable housing for the elderly and handicapped citizens of Lexington, Kentucky. The deferment would assure the property's affordability for an additional 20 years.

Contact: Mark B. Van Kirk, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• **Regulation:** 24 CFR 219.220(b).

Project/Activity: Allegheny Union Baptist, FHA Project Number 033–SH009, Pittsburgh, Pennsylvania. The owner has requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan due to their inability to pay the loan in full upon maturity.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 4, 2013.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan because there were insufficient funds available to repay the loan upon maturity. The owner advised that it planned to rehabilitate the senior building, creating more spacious units, using energy-efficient practices and providing vital amenities that allow the elderly residents to age in place. The deferment would assure the property's affordability for an additional 20 years.

Contact: Mark B. Van Kirk, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6160, Washington DC 20410, telephone (202) 708–3730.

• **Regulation:** 24 CFR 219.220(b).

Project/Activity: Quincy Point Homes III, FHA Project Number 023–44809, Quincy, Maine. The owners have requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan on this project due to their inability to repay the loan in full upon maturity.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2013.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan to allow the much needed preservation and moderate rehabilitation of the project. The project will be preserved as an affordable housing resource for an additional 20 years for the residents of Quincy.

Contact: Minnie Monroe-Baldwin, Director of Preservation, Office of Affordable Housing Preservation, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2636.

• **Regulation:** 24 CFR 232.7.

Project/Activity: Dolan Residential Care (Dolan) serves dementia care residents and operates out of five separate buildings. The facilities are licensed for 51 residents in total. The buildings are located in St. Louis, MO.

Nature of Requirement: The regulation mandates in a board and care home or assisted living facility that the not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 27, 2013.

Reason Waived: It was determine that the dementia care residents of Dolan all need assistance with bathing. The bathrooms/shower rooms provide enough space for staff to safely assist the residents. Dolan has concluded that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Program, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• **Regulation:** 24 CFR 290.30.

Project/Activity: San Augustine Development Center (located in the County of San Augustine, in the State of Texas) has been in two different Note Sales—at which time the Office of Healthcare Programs (OHP) has not accepted the bids. OHP has now received a proposal from the County (coordinated by County Judge Samye Johnson) to purchase the note in an amount greater than the two competitive bids. This proposal was made on a non-competitive basis and therefore does not meet the requirement in 24 CFR§ 290.30, which requires that HUD sell HUD-held multifamily mortgages on a competitive basis.

Nature of Requirement: Section 290.30 of HUD's regulations requires that HUD shall sell HUD-held multifamily mortgages on a competitive basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 18, 2013.

Reason Waived: It was determined that the amount proposed by the County would be substantially higher than the highest bids in the previous attempts to sell the note competitively, and the County proposed to use the facility to promote services to the residents of the County, which is in line with HUD's mission.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Program, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• **Regulation:** 24 CFR 891.100(d).

Project/Activity: Valor Apartments, Seattle, WA, Project Number: 127–HD045/WA19–Q101–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 16, 2013.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• **Regulation:** 24 CFR 891.165.

Project/Activity: Westcliff Heights Senior Apartments, Las Vegas, NV, Project Number: 125–EE131/NV25–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2013.

Reason Waived: Additional time was needed due to unexpected construction cost increases and complexities involved in the proposed financing structure for this capital advance upon completion project to reach initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6134, Washington, DC 20410, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• **Regulation:** 24 CFR 941.606(n)(1)(ii).

Project/Activity: South Mississippi Housing and Development Corporation, MS/Sanderson Village Homes.

Nature of Requirement: The provision requires that the PHA shall submit certifications and assurances warranting that it ''will use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interested involved in the PHA's selection or the partner and/or ownership entity to develop and operate the proposed public housing units.''

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: October 21, 2013.

Reason Waived: HUD reviewed, and acknowledged South Mississippi Housing and Development Corporation (SMHD) decisions to procure Landmark development Services, LLC through a noncompetitive proposal, as permitted under 24 CFR 85.36(d)(4). As a result of this action, SMHD could not submit the required certifications and assurances that it would use an open and competitive process to select its partners, as required under 24 CFR 941.606(n)(l)(ii), as part of its mixed-finance proposal for Sanderson Village Homes. Therefore, good cause was found to waive 24 CFR 941.606(n)(l)(ii) for the limited purpose of selecting Landmark Development Services, LLC as the development partner for this project.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and

Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• **Regulation:** 24 CFR 982.503(c), 982.503(c)(4)(ii) and 982.503(c)(5).

Project/Activity: Burleigh County Housing Authority (BCHA), Burleigh County, ND.

Nature of Requirement: Section 982.503(c) of HUD's regulations establishes the methodology for establishing exception payment standards for an area. Section 982.503(c)(4)(ii) states that HUD will only approve an exception payment standard amount after six months from the date of HUD approval of an exception payment standard amount above 110 percent to 120 percent of the published fair market rent (FMR). Section 982.503(c)(5) states that the total population of a HUD-approved exception area in an FMR area may not include more than 50 percent of the population of the FMR area.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 26, 2013.

Reason Waived: These waivers were granted because on June 6, 2012, due a shock to the rental housing market in the Bismarck, ND, the fair market rent (FMR) area caused by increased economic activity due to natural resource exploration. These waivers were allowed to remain in effect since the conditions originally cited still exist.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th St. SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 982.505(d).

Project/Activity: Howard County Housing Commission (HCHC), Columbia, MD.

Nature of Requirement: Section 982.505(d) of HUD's regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 11, 2013.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a two-bedroom unit (although only eligible for a one-bedroom voucher) that met her needs. To provide this reasonable accommodation so that the client could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, the HCHC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 982.505(d).

Project/Activity: Housing Authority of Grays Harbor County (HAGHC), Aberdeen, WA.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 4, 2013.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a unit that met her needs. To provide this reasonable accommodation so that the client could move to a new unit and pay no more than 40 percent of her adjusted income toward the family share, the HAGHC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 983.259(a).

Project/Activity: Michigan State Housing Development Authority (MSHDA), Lansing, MI.

Nature of Requirement: This regulation states that in the project-based voucher (PBV) program, the PHA's subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a wrong-size unit, the PHA must promptly notify the family and owner of this determination and of the PHA's offer of continued assistance in another unit which could include PBV assistance in an appropriate-size unit in the same or other building, other project-based assistance, tenant-based rental assistance, or other comparable public or private tenant-based assistance.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 6, 2013.

Reason Waived: This regulation was waived in order to protect families (many elderly and/or disabled) living in PBV units that would be affected by MSHDA's change in subsidy standards by requiring them to move. If and when these families move from their current PBV units, the new subsidy standards would apply.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 984.303(d).

Project/Activity: Vacaville Housing Authority (VHA), Vacaville, CA.

Nature of Requirement: This regulation limits extensions of Family Self-Sufficiency (FSS) contracts by a public housing agency to two years beyond the initial five-year term of the FSS contract.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 19, 2013.

Reason Waived: The failure to complete the contract within the contract term was due to an injury at work and the elimination of the FSS participant's job position. Therefore, additional time was approved for the completion of the FSS contract.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 984.303(b)(1).

Project/Activity: Housing Opportunities Commission of Montgomery County (HOC), Kensington, MD.

Nature of Requirement: This regulation states that the Family Self-Sufficiency (FSS) contract of participation shall be in the form prescribed by HUD. The form prescribed by HUD (form HUD–52650) requires the effective date to be the first day of the month following the date the contract was signed by the family and the PHA's representative.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 2013.

Reason Waived: The FSS participant's contract was lost due to no fault of her own and the contract would have had an effective date of March 1, 2013. Therefore, the contract was allowed to have an effective date of March 1, 2013.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 985.101(a).

Project/Activity: City of Crescent City Housing Authority (CCCHA), Crescent City, CA.

Nature of Requirement: Section 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 4, 2013.

Reason Waived: This waiver was granted since the Executive Director was on maternity leave and no one else had rights in the Public and Indian Housing Information Center to submit the SEMAP certification. CCCHA was permitted to submit its SEMAP certification after the due date.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** 24 CFR 985.101(a).

Project/Activity: Spartanburg Housing Authority (SHA), Spartanburg, SC.

Nature of Requirement: Section 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 2013.

Reason Waived: This waiver was granted since the Section 8 Program Manager attempted to submit the SEMAP certification on November 25, 2013, but the program timed out. Subsequently, her husband became very ill and she was unable to complete the task; in addition, she did not make anyone in the office aware of her failure to submit. SHA was permitted to submit its SEMAP certification after the due date.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• **Regulation:** FR–5729–N–01: Partial Section Eight Management Assessment Program (SEMAP) Indicator Waiver; Family Self-Sufficiency (FSS) Program Demonstration.

Project/Activity: The waiver, Partial Section Eight Management Assessment Program (SEMAP) Indicator Waiver; Family Self-Sufficiency (FSS) Program Demonstration, published on December 30, 2013, at 78 FR 79310, was issued to establish a temporary modification to the rating of enrollment and escrow accounts for public housing agencies (PHAs) with mandatory Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) programs that voluntarily participate in HUD's study of the FSS program to facilitate the participation of PHAs in the study. The PHAs participating in the study have the option to comply with certain alternative requirements to existing regulations, and if they opted to do so the existing regulations would be waived.

Nature of Requirement: The modification to the requirements that were offered under the waiver were the following: The waiver allows the rating of SEMAP indicator, ''Family self-sufficiency (FSS) enrollment and escrow accounts'', to be calculated solely by the percentage of mandatory FSS slots that have been filled for participating PHAs during the second and third full reporting periods ending after the PHA's enrollment in the study, which would be a waiver of the requirement to calculate the rating using also the percent of FSS families with escrow balances in 24 CFR 985.3(o). The waiver would allow PHAs participating in the study to elect to have the SEMAP performance indicator for FSS enrollment and escrow accounts rated in this manner by refraining from submitting data for SEMAP indicator item 14b of form HUD–52648, which is a partial waiver of the requirement that all PHAs administering a Section 8 tenant-based assistance program are required annually to submit a SEMAP Certification form concerning performance under the fourteen SEMAP indicators in 24 CFR 985.101.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 30, 2013.

Reason Waived: The waivers and alternative requirements were granted because they would help facilitate the participation of PHAs in a study to determine whether FSS program features, rather than the characteristics of the participating families, cause participant incomes to increase. PHAs participating in the study may experience unintended consequences including a decreased rating on the Section 8 Management Assessment Program (SEMAP) performance indicator that specifically measures for the percentage of families with escrow balances, and the waiver eliminates this concern.

Contact: Regina Gray, PhD, Office of Policy Development and Research, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 8132, Washington, DC 20410, telephone number (202) 402–2876.

[FR Doc. 2014–05803 Filed 3–14–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N027; FXES11120000–134–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan for the Sweetwater Riding and Hiking Trail, County of San Diego, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Sweetwater Authority (applicant) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the endangered San Diego fairy shrimp associated with the proposed use of an established hiking, biking, and equestrian trail near the Sweetwater Reservoir in unincorporated San Diego County, California. A conservation program to avoid, minimize, and mitigate for the project activities would be implemented as described in the proposed Sweetwater Riding and Hiking Trail Low-Effect Habitat Conservation Plan (proposed HCP), which would be implemented by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''low-effect'' Habitat Conservation Plan, 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 also available for public review.

DATES: Written comments should be received on or before April 16, 2014.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008. Written comments may also be sent by facsimile to 760–431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing for copies of the application, proposed HCP, and EAS should contact the Service immediately, by telephone at 760–431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service 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 an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

In December 2013, the applicant closed a segment of a San Diego County regional recreational trail system due to the discovery of the San Diego fairy shrimp (*Branchinecta sandiegonensis*) within ponded areas that had formed within the existing trail alignment. The applicant is seeking a 5-year permit for the take of San Diego fairy shrimp in the interim period of time while the applicant works to find a long-term solution to maintaining a trail connection. The applicant proposes to re-open the existing hiking, biking, and equestrian trail segment where there are currently four seasonally ponded pools covering a total of 291 square feet that are considered occupied by San Diego fairy shrimp. Re-opening the trail to recreational uses may impact San Diego fairy shrimp occurring in these pools. The applicant proposes to install temporary bridges and fencing to minimize impacts to the occupied pools and re-open the trail segment.

The trail segment provides an important connection within a popular regional trail system, and continued closure of the trail will likely result in creation of unsanctioned alternate trails with unpredictable impacts to natural resources. We anticipate minor impacts to San Diego fairy shrimp within up to 145 square feet of the pools due to the effects of shading from the bridges and possible loss of individual San Diego fairy shrimp cysts due to trail maintenance. Although the project site is surrounded by occupied habitat for several federally threatened and endangered species, there are no other listed species specifically within the project alignment. Critical habitat for Otay tarplant (*Deinandra conjugens*) and spreading navarretia (*Navarretia fossalis*) occurs on the project site.

Proposed Action and Alternatives

The Sweetwater Authority proposes to mitigate impacts to the San Diego fairy shrimp through efforts that have resulted in the restoration of 290 square feet of vernal pool habitat occupied by San Diego fairy shrimp and are permanently protected and managed.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the San Diego fairy shrimp. Four alternatives to the taking of the listed species under the Proposed Action are considered in the proposed HCP. Under the Permanent Trail Closure (No Action) Alternative, no authorized incidental take of San Diego fairy shrimp would occur; however, it is likely that unsanctioned alternate trail use would occur that would result in more impacts than under the Proposed Action, and recreational opportunities would be substantially reduced. Under the Minor Trail Deviation Alternative, immediate impacts to San Diego fairy shrimp would be avoided by moving the trail away from existing pools, but trail use would likely result in new depressions that could eventually be colonized by San Diego fairy shrimp and subsequently be impacted. Under the Different Location Alternative, the trail would be routed elsewhere to prevent additional impacts; however, planning and permitting this alternative will take up to 5 years, during which time recreational opportunities would be substantially reduced and alternative unsanctioned trail use would likely occur. Under the Reconstruction of the Existing Trail Segment Alternative, existing pools within the trail segment would be recontoured and/or filled to prevent San Diego fairy shrimp from developing within the pools, thereby reducing ongoing incidental take. However, this alternative would result in greater impacts to the species and require additional regulatory permitting.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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).

Karen A. Goebel,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2014–05763 Filed 3–14–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS03100 L13400000.PQ0000; 13–08807; MO# 4500054217; TAS 14X5017]

Notice Seeking Public Interest for Solar Energy Development on Public Lands in the Dry Lake Solar Energy Zone in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Southern Nevada District is seeking expressions of interest in proposing projects for utility-scale solar energy development on approximately 5,717 acres of public land identified as the Dry Lake Solar Energy Zone (SEZ) in Clark County, Nevada.

DATES: Parties interested in proposing a solar energy project on the lands described in this notice should do so by April 16, 2014.

ADDRESSES: Submissions should be sent to the Bureau of Land Management, Attention: Greg Helseth, Renewable Energy Project Manager, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301. Electronic submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Greg Helseth, Renewable Energy Project Manager, by telephone at 702–515–5173; or by email at *ghelseth@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–702–515–5086 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Dry Lake SEZ is approximately 25 miles northeast of Las Vegas, Nevada, in an undeveloped rural area. The nearest major roads accessing the Dry Lake SEZ are I–15, which runs along the southeastern border of the SEZ, and U.S. 93, which runs along the southwestern border of the SEZ. The subject public lands are described as:

Mount Diablo Meridian

T. 17 S., R. 63 E.,
- Sec. 33, lots 9, 10, 13 and 14, NE¼SE¼;
- Sec. 34, lots 1 thru 4, NE¼, S½NW¼, and N½S½;
- Secs. 35 and 36.

T. 18 S., R. 63 E.,
- Secs. 1 and 2;
- Sec. 3, lots 1 thru 3, 5, 7 thru 10, 13, and 14, S½NE¼, NE¼SE¼;
- Sec. 4, lot 5;
- Sec. 10, lot 1;
- Sec. 11, lots 1, 3 thru 5, and 9, NE¼, N½SE¼, SE¼SE¼, NE¼NW¼;
- Sec. 12; that portion lying northerly and westerly of the centerline of the southbound lane of I–15;
- Sec. 13, that portion lying northerly and westerly of the centerline of the southbound lane of I–15 and northerly and easterly of the centerline of U.S. Highway No. 93;
- Sec. 14, lot 1.

T. 17 S., R. 64 E.,
- Sec. 31, lots 5 thru 8, SW¼NE¼, E½W½, and that portion of the SE¼ lying northerly and westerly of the centerline of the southbound lane of I–15;
- Sec. 32, that portion of the SW¼ lying northerly and westerly of the centerline of the southbound lane of I–15.

T. 18 S., R. 64 E.,
- Secs. 6 and 7, that portion lying northerly and westerly of the centerline of the southbound lane of I–15, respectively.

The area described contains an aggregate of 6,160 acres, more or less, in Clark County, Nevada.

During the development of the Solar Energy Programmatic Environmental Impact Statement (EIS) and Record of Decision (ROD), the BLM identified 469 acres of floodplain and wetland as non-development areas within the Dry Lake SEZ, leaving 5,717 acres within the SEZ as available for development. A map of the SEZ can be viewed and downloaded at: *http://solareis.anl.gov/maps/index.cfm.*

The request for interest follows a 2-year planning effort on the public lands as part of the Solar Energy Programmatic EIS and ROD. On October 12, 2012, the Secretary of the Interior signed the ROD, which amended 89 resource management plans. The Solar Energy Programmatic EIS and ROD provide a road map for utility-scale solar energy development on public lands. Public comments were received during the draft, supplemental, and final Programmatic EIS process. While the ROD does not authorize any solar energy development projects or eliminate the need for site-specific environmental review for future utility-scale projects, the Dry Lake SEZ was identified by the BLM under the Solar Energy Programmatic EIS and ROD as one of the areas as best suited for solar energy development because of fewer potential resource conflicts than other areas on the public land. The Solar Energy Programmatic EIS also will help streamline site-specific environmental analysis for future proposed projects in the Dry Lake SEZ. This notice also announces the release of the ''Solar Regional Mitigation Strategy for the Dry Lake Solar Energy Zone'' that describes off-site mitigation costs that will be required for the development of future solar energy projects in the Dry Lake SEZ. The Mitigation Strategy is available online at h*ttp://blmsolar.anl.gov/sez/nv/dry-lake/mitigation.*

Two designated transmission corridors pass through the Dry Lake SEZ. These corridors have numerous natural gas, petroleum product, and electric transmission lines, including a 500-kV transmission line.

Parties interested in proposing a solar energy development project in the Dry Lake SEZ, or portion of the Dry Lake SEZ, should submit a letter of interest and a preliminary right-of-way (ROW) application (SF–299) to the address in the **ADDRESSES** section. The ROW application form is available online: *http://www.gsa.gov/portal/forms/download/117318.* The ROW application should include a legal description and map of the specific parcel of land that is proposed for solar energy development.

The BLM Southern Nevada District has one ROW application within the Dry Lake (SEZ) serialized as NVN–084232. Applications for solar energy development are processed as ROW authorizations under Title V of the Federal Land Policy and Management Act of 1976. The regulations at 43 CFR 2804.23 authorize the BLM to determine whether competition exists among ROW applications filed for the same area. The regulations also allow the BLM to resolve any such competition by using competitive bidding procedures.

The BLM will review submissions from interested parties in response to this notice and determine whether competition exists to develop solar energy projects in the Dry Lake SEZ. If the BLM determines sufficient competition exists, the BLM may use a competitive bidding process, consistent with the regulations, to select a preferred applicant in the Dry Lake SEZ.

Authority: 43 CFR 2804.23.

Amy L. Lueders,
State Director.

[FR Doc. 2014–05633 Filed 3–14–14; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0001]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for Cancellation of Removal (42A) for Certain Permanent Residents; and Application for Cancellation of Removal and Adjustment of Status (42B) for Certain Nonpermanent Residents

AGENCY: Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for sixty (60) days until May 16, 2014.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 20530; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with

5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal for Certain Permanent Residents (42A); Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (42B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: EOIR–42A, EOIR–42B. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be removable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 34,815 respondents will complete the form annually with an average of 5 hours, 50 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 202,971 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: February 26, 2014.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2014–04657 Filed 3–14–14; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Nally & Hamilton Enterprises, Inc.,* Civil Action No. 6:14-cv-00055–DLB, was lodged with the United States District Court for the Eastern District of Kentucky on March 7, 2014.

This proposed Consent Decree concerns a complaint filed by the United States against Nally & Hamilton Enterprises, Inc., pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Leslie M. Hill, United States Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044–7611 and refer to *United States* v. *Nally & Hamilton Enterprises, Inc.,* DJ # 90–5–1–1–18987.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Kentucky, 35 West 5th Street, Covington, Kentucky 41012. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–05709 Filed 3–14–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification To Consent Decree With Dairyland Power Cooperative Under the Clean Air Act

On March 10, 2014, the Department of Justice lodged a proposed modification to a Consent Decree with the United States District Court for the Western District of Wisconsin in the lawsuit entitled *United States of America* v. *Dairyland Power Cooperative,* Civ. Action No. 12-cv-462 (W.D. Wis.). The Consent Decree was entered in August 2012, and resolved the United States' claims in Case. No. 12-cv-462, as well as similar claims brought by the Sierra Club in related litigation in *Sierra Club* v. *Dairyland Power Coop.,* Civ. Action No. 10-cv-303-bbc.

The original Consent Decree resolved Clean Air Act New Source Review and Title V violations at two coal-fired power plants owned and operated by Dairyland Power Cooperative (''DPC''). *See* 77 FR 39,737 (July 5, 2012). Both plants are located in Wisconsin: The Alma/J.P. Madgett plant in Buffalo County, and the Genoa plant in Vernon County. The proposed modification would extend by eight months the time for Dairyland to comply with the Consent Decree's 30-day rolling average sulfur dioxide emission rate for one of the units at the Alma/J.P. Madgett plant. The extension relates to permitting delays encountered by Dairyland during the construction of Decree-mandated pollution controls. The proposed modification also would require Dairyland to offset additional emissions caused by the delay by reducing overall pollution from the Alma/J.P. Madgett plant beyond the levels required by the original Consent Decree.

The publication of this notice opens a period for public comment on the proposed modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Dairyland Power Cooperative,* Civ. Action No. 12-cv-462 (W.D. Wis.), D.J. Ref. 90–5–2–1–10163. 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 e-mail ..	*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 modification to the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* The Justice Department will provide a paper copy of the proposed modification to the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–05718 Filed 3–14–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *February 10, 2014 through February 14, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations For Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Negative Determinations For Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations For Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–85,040; S&S Transportation, Inc., Lincoln, Maine

Determinations Terminating Investigations Of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–85,002; Innovative Hearth Products, Union City, Tennessee

TA–W–85,014; Nilfisk-Advance, Inc., Plymouth Minnesota

TA–W–85,032; Harrington Tool Company, Ludington, Michigan

TA–W–85,043; Ross Sand Casting Industries, Inc., Winchester, Indiana

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–85,008; Umpqua Lumber Company, Dillard, Oregon

I hereby certify that the aforementioned determinations were issued during the period of *February 10, 2014 through February 14, 2014.* These determinations are available on the Department's Web site t*radeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 20th day of February 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–05759 Filed 3–14–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *February 10, 2014 through February 14, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,344	Rellim Business Solutions, LLC, Manpower	Clermont, IA	December 30, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,051E	Medtronic, Corporate/PRL, Populus Group, SDK Software, Infotree Service, DOCS Global.	Coon Rapids, MN	August 26, 2012.
83,273	BNY Mellon, Client and Accounting and Reporting Services	Brooklyn, NY	December 1, 2012.
83,304	Cmed Inc., The Clinical Resource Network	New Providence, NJ	December 11, 2012.
83,360	Rosemount Aerospace, Inc. D/B/A UTC Aerospace Systems, Goodrich Corporation, UTC Division, Adecco USA.	Burnsville, MN	December 31, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
83,051A	Medtronic	Spring Lake Park, MN	
83,051C	Medtronic, Neuromodulation	Fridley, MN	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
83,051	Medtronic, Structural Heart	Brooklyn Park, MN	
83,051B	Medtronic, Corporate Headquarters	Fridley, MN	
83,051D	Medtronic, Neuromodulation	Fridley, MN	
83,072	TGM2 Inc.	Clearwater, FL	
83,327	Miller Compressing Company, Alter Trading Corporation	Milwaukee, WI	
83,336	Travelplan USA Inc., D/B/A See USA Tours	Jamaica, NY	

I hereby certify that the aforementioned determinations were issued during the period of *February 10, 2014 through February 14, 2014.* These determinations are available on the Department's Web site *tradeact/taa/taa_*

search_cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC, this 20th day of February 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–05760 Filed 3–14–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 27, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of February 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix—13 TAA Petitions Instituted Between 2/10/14 and 2/14/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85059	Avery Dennison (Company)	Clinton, SC	02/10/14	02/10/14
85060	Fresenius Medical Care NA (Workers)	Livingston, CA	02/11/14	02/10/14
85061	IBM (State/One-Stop)	San Jose, CA	02/11/14	02/10/14
85062	Computer Sciences Corporation (State/One-Stop)	Oakland, CA	02/11/14	02/10/14
85063	EPIC Technologies, LLC (Company)	El Paso, TX	02/11/14	02/10/14
85064	Southside Manufacturing (Workers)	Blairs, VA	02/11/14	02/04/14
85065	Woodcraft Industries (Company)	Belletonte, PA	02/12/14	02/10/14
85066	Sun Edison (previously MEMC) (State/One-Stop)	St. Peters, MO	02/12/14	02/12/14
85067	FLSmidth Spokane Inc (Workers)	Meridian, ID	02/12/14	02/11/14
85068	GE Hitachi Nuclear Energy (Company)	Canonsburg, PA	02/12/14	02/11/14
85069	Allstate Insurance Company (Workers)	Roanoke, VA	02/12/14	01/28/14
85070	Time Machine, Inc. (Company)	Polk, PA	02/14/14	02/12/14
85071	General Electric (GE) (Union)	Ft. Edward, NY	02/14/14	02/04/14

[FR Doc. 2014–05758 Filed 3–14–14; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2014–03]

Music Licensing Study: Notice and Request for Public Comment

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The United States Copyright Office announces the initiation of a study to evaluate the effectiveness of existing methods of licensing music. To aid this effort, the Office is seeking public input on this topic. The Office will use the information it gathers to report to Congress. Congress is currently conducting a review of the U.S. Copyright Act, 17 U.S.C. 101 *et seq.,* to evaluate potential revisions of the law in light of technological and other developments that impact the creation, dissemination, and use of copyrighted works.

DATES: Written comments are due on or before May 16, 2014. The Office will be announcing one or more public meetings to address music licensing issues, to take place after written comments are received, by separate notice in the future.

ADDRESSES: All comments shall be submitted electronically. A comment page containing a comment form is posted on the Office Web site at *http://www.copyright.gov/docs/musiclicensingstudy*. The Web site interface requires commenting parties to complete a form specifying their name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's Web site in the form that they are received, along with associated names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Sarang V. Damle, Special Advisor to the General Counsel, by email at *sdam@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Congress is currently engaged in a comprehensive review of the U.S. Copyright Act, 17 U.S.C. 101 *et seq.,* to evaluate potential revisions to the law in light of technological and other developments that impact the creation, dissemination, and use of copyrighted works. The last general revision of the Copyright Act took place in 1976 (''Copyright Act'' or ''Act'') following a lengthy and comprehensive review process carried out by Congress, the Copyright Office, and interested parties. In 1998, Congress significantly amended the Act with the passage of the Digital Millennium Copyright Act (''DMCA'') to address emerging issues of the digital age. Public Law 105–304, 112 Stat. 2860 (1998). While the Copyright Act reflects many sound and enduring principles, and has enabled the internet to flourish, Congress could not have foreseen all of today's technologies and the myriad ways consumers and others engage with creative works in the digital environment. Perhaps nowhere has the landscape been as significantly altered as in the realm of music.

Music is more available now than it has ever been. Today, music is delivered to consumers not only in physical formats, such as compact discs and vinyl records, but is available on demand, both by download and streaming, as well as through smartphones, computers, and other devices. At the same time, the public continues to consume music through terrestrial and satellite radio, and more recently, internet-based radio. Music continues to enhance films, television, and advertising, and is a key component of many apps and video games.

Such uses of music require licenses from copyright owners. The mechanisms for obtaining such licenses are largely shaped by our copyright law, including the statutory licenses under Sections 112, 114, and 115 of the Copyright Act, which provide government-regulated licensing regimes for certain uses of sound recordings and musical works.

A musical recording encompasses two distinct works of authorship: The musical work, which is the underlying composition created by the songwriter or composer, along with any accompanying lyrics; and the sound recording, that is, the particular performance of the musical work that has been fixed in a recording medium such as CD or digital file. The methods for obtaining licenses differ with respect to these two types of works, which can be—and frequently are—owned or managed by different entities. Songwriters and composers often assign rights in their musical works to music publishers and, in addition, affiliate themselves with performing rights organizations (''PROs''). These intermediaries, in turn, assume responsibility for licensing the works. By contrast, the licensing of sound recordings is typically handled directly by record labels, except in the case of certain types of digital uses, as described below.

Musical Works—Reproduction and Distribution. Under the Copyright Act, the owner of a musical work has the exclusive right to make and distribute phonorecords of the work (*i.e.,* copies in which the work is embodied, such as CDs or digital files), as well as the exclusive right to perform the work publicly. 17 U.S.C. 106(1), (3). The copyright owner can also authorize others to engage in these acts. *Id.* These rights, however, are typically licensed in different ways.

The right to make and distribute phonorecords of musical works (often referred to as the ''mechanical'' right) is subject to a compulsory statutory license under Section 115 of the Act. *See generally* 17 U.S.C. 115. That license—instituted by Congress over a century ago with the passage of the 1909 Copyright Act—provides that, once a phonorecord of a musical work has been distributed to the public in the United States under the authority of the copyright owner, any person can obtain a license to make and distribute phonorecords of that work by serving a statutorily compliant notice and paying the applicable royalties. *Id.*

In 1995, Congress confirmed that a copyright owner's exclusive right to reproduce and distribute phonorecords of a musical work, and the Section 115 license, extend to the making of ''digital phonorecord deliveries'' (''DPDs'')—that is, the transmission of digital files embodying musical works. *See* Digital Performance Right in Sound Recordings Act of 1995 (''DPRSRA''), Public Law 104–39, sec. 4, 109 Stat. 336, 344–48; 17 U.S.C. 115(c)(3)(A).[1] The Copyright Office has thus interpreted the Section 115 license to cover music downloads (including ringtones), as well as the server and other reproductions necessary to engage in streaming activities. *See* In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding, Docket No. RF 2006–1 (Oct. 16, 2006), *http://www.copyright.gov/docs/ringtone-decision.pdf;* Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries, 73 FR 66173 (Nov. 7, 2008).

Licenses under Section 115 are obtained on a song-by-song basis. Because a typical online music service needs to offer access to millions of songs to compete in the marketplace, obtaining the licenses on an individual basis can present administrative challenges.[2] Many music publishers have designated the Harry Fox Agency, Inc. as an agent to handle such song-by-song mechanical licensing on their behalf.

The royalty rates and terms for the Section 115 license are established by an administrative tribunal—the Copyright Royalty Board (''CRB'')[3]—which applies a standard set forth in Section 801(b) of the Act that considers four different factors. These include: The availability of creative works to the public; economic return to the owners and users of musical works; the respective contributions of owners and users in making works available; and the industry impact of the rates.[4]

The Section 115 license applies to audio-only reproductions that are primarily made and distributed for private use. *See* 17 U.S.C. 101, 115. Reproductions and distribution of musical works that fall outside of the Section 115 license—including ''synch'' uses in audiovisual media like

[1] Under the terms of Section 115, a record company or other entity that obtains a statutory license for a musical work can, in turn, authorize third parties to make DPDs of that work. *See* 17 U.S.C. 115(c)(3). In such a ''pass-through'' situation, the statutory licensee is then responsible for reporting and paying royalties for such third-party uses to the musical work owner.

[2] Concerns about the efficiency of the Section 115 licensing process are not new. For instance, in 2005, then-Register of Copyrights Marybeth Peters testified before Congress that Section 115 had become ''outdated,'' and made several proposals to reform the license. *See Copyright Office Views on Music Licensing Reform: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Property of the H. Comm. on the Judiciary,* 109th Cong. 4–9 (2005). In 2006, the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property forwarded the Section 115 Reform Act (''SIRA'') to the full Judiciary Committee by unanimous voice vote. *See* H.R. 5553, 109th Cong. (2006). This bill would have updated Section 115 to create a blanket-style license. The proposed legislation was not reported out by the full Judiciary Committee, however.

[3] The Copyright Royalty Board (''CRB'') is the latest in a series of administrative bodies Congress has created to adjust the rates and terms for the statutory licenses. The first, the Copyright Royalty Tribunal (''CRT''), was created in 1976. *See* Public Law 94–553, sec. 801, 90 Stat. 2541, 2594–96 (1976). In 1993, Congress replaced the CRT with a system of ad-hoc copyright arbitration royalty panels (''CARPs''). *See* Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, sec. 2, 107 Stat. 2304, 2304–2308. Congress replaced the CARP system with the CRB in 2004. *See* Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419, 118 Stat. 2341.

[4] *See* 17 U.S.C. 801(b)(1).

television, film, and videos; advertising and other types of commercial uses; and derivative uses such as ''sampling''—are licensed directly from the copyright owner according to negotiated rates and terms.

Musical Works—Public Performance. The method for licensing public performances of musical works differs significantly from the statutory mechanical license provided under Section 115. Licensing fees for such performances are generally collected on behalf of music publishers, songwriters, and composers by the three major PROs: the American Society of Composers, Authors and Publishers (''ASCAP''), Broadcast Music, Inc. (''BMI''), and SESAC. Songwriters and composers, as well as their publishers, commonly affiliate with one of the three for purposes of receiving public performance income. Rather than song-by-song licenses, the PROs typically offer ''blanket'' licenses for the full range of music in their repertories. These licenses are available for a wide variety of uses, including terrestrial, satellite, and internet radio, on-demand music streaming services, Web site and television uses, and performance of music in bars, restaurants, and other commercial establishments. The PROs monitor the use of musical works by these various entities and apportion and distribute collected royalties to their publisher, songwriter, and composer members.

Unlike the mechanical right, the public performance of musical works is not subject to compulsory licensing under the Copyright Act. Since 1941, however, ASCAP and BMI's licensing practices have been subject to antitrust consent decrees overseen by the Department of Justice.[5] These consent decrees were designed to protect licensees from price discrimination or other anti-competitive behavior by the two PROs. Under the decrees, ASCAP and BMI administer the public performance right for their members' musical works on a non-exclusive basis. They are required to provide a license to any person who seeks to perform copyrighted musical works publicly, and must offer the same terms to similarly situated licensees. In addition, ASCAP's consent decree expressly bars it from offering mechanical licenses.[6] Since 1950, prospective licensees that are unable to agree to a royalty rate with ASCAP or BMI have been able to seek a determination of a reasonable license fee in the federal district court for the Southern District of New York.[7]

The two PRO consent decrees were last amended well before the proliferation of digital music: The BMI decree in 1994,[8] and the ASCAP decree in 2001.[9] The consent decrees have been the subject of much litigation over the years, including, most recently, suits over whether music publishers can withdraw digital licensing rights from the PROs and negotiate public performance licenses directly with digital music services.[10]

Sound Recordings—Reproduction and Distribution. Congress extended federal copyright protection to sound recordings in 1972. That law, however, did not provide retroactive protection for sound recordings fixed prior to February 15, 1972, and such works therefore have no federal copyright status.[11] They are, however, subject to the protection of applicable state laws until 2067. *See* 17 U.S.C. 301(c).[12]

The owner of a copyright in a sound recording fixed on or after February 15, 1972, like the owner of a musical work copyright, enjoys the exclusive right to reproduce and distribute phonorecords embodying the sound recording, including by means of digital transmission, and to authorize others to do the same. 17 U.S.C. 106(1), (3), 301(c). Except in the limited circumstances where statutory licensing applies, as described below, licenses to reproduce and distribute sound recordings—such as those necessary to make and distribute CDs, transmit DPDs, and operate online music services, as well as to use sound recordings in a television shows, films, video games, etc.—are negotiated directly between the licensee and sound recording owner (typically a record label). Thus, while in the case of musical works, the royalty rates and terms applicable to the making and distribution of CDs, DPDs, and the operation of interactive music services are subject to government oversight, with respect to sound recordings, licensing for those same uses takes place without government supervision.

Sound Recordings—Public Performance. Unlike musical works, a sound recording owner's public performance right does not extend to all manner of public performances. Traditionally, the public performance of sound recordings was not subject to protection at all under the Copyright Act. In 1995, however, Congress enacted the DPRSRA, which provided for a limited right when sound recordings are publicly performed ''by means of a digital audio transmission.'' Public Law 104–39, 109 Stat. 336; 17 U.S.C. 106(6), 114(a). This right extends, for example, to satellite radio and internet-based music services.[13] Significantly, however, the public performance of sound recordings by broadcast radio stations remains exempt under the Act. 17 U.S.C. 114(d)(1).[14]

[5] *See generally United States* v. *Broadcast Music, Inc.,* 275 F.3d 168, 171–72 (2d Cir. 2001) (describing the history). SESAC, a smaller performing rights organization created in 1930 to serve European publishers, is not subject to a similar consent decree, although it has been involved recently in private antitrust litigation. *See Meredith Corp.* v. *SESAC LLC,* No. 09–cv–9177, 2014 WL 812795 (S.D.N.Y. Mar. 3, 2014).

[6] *United States* v. *ASCAP,* No. 41–cv–1395, 2001–2 Trade Cas. (CCH) ¶ 73,474, 2001 WL 1589999, *3 (S.D.N.Y. June 11, 2001). Although BMI has taken the position that a strict reading of its consent decree does not bar it from offering mechanical licenses, it generally has not done so. *See* Broadcast Music, Inc., Comments on Department of Commerce Green Paper 4–5 (Nov. 13, 2013), *available at http://www.ntia.doc.gov/files/ntia/bmi_comments.pdf.*

[7] Significantly, musical work owners are precluded from offering evidence concerning the licensing fees paid for digital performances of sound recordings as a point of comparison in the district court ratesetting proceedings. Section 114 of the Copyright Act provides that license fees payable for the public performance of sound recordings may not be taken into account ''in any administrative, judicial, or other governmental proceeding to set or adjust the rates payable to'' musical work copyright owners. 17 U.S.C. 114(i).

[8] *United States* v. *Broadcast Music, Inc.,* No. 64–cv–3787, 1966 Trade Cas. (CCH) ¶ 71,941 (S.D.N.Y. 1966), *as amended,* 1996 Trade Cases (CCH) ¶ 71,378, 1994 WL 901652 (S.D.N.Y. Nov. 18, 1994).

[9] *United States* v. *ASCAP,* No. 41–cv–1395, 2001–2 Trade Cas. (CCH) ¶ 73,474, 2001 WL 1589999 (S.D.N.Y. June 11, 2001).

[10] *See In re Pandora Media, Inc.,* Nos. 12–cv–8035, 41–cv–1395, 2013 WL 5211927 (S.D.N.Y. Sept. 17, 2013); *Broadcast Music, Inc.* v. *Pandora Media, Inc.,* Nos. 13–cv–4037, 64–cv–3787, 2013 WL 6697788 (S.D.N.Y. Dec. 19, 2013).

[11] In 2009, Congress asked the Copyright Office to study the ''desirability and means'' of extending federal copyright protection to pre-February 15, 1972 sound recordings. Public Law 111–8, 123 Stat. 524 (2010) (explanatory statement). In 2011, the Office completed that study, issuing a report recommending that federal copyright protection be so extended. United States Copyright Office, *Federal Copyright Protection for Pre-1972 Sound Recordings* (2011), *available at http://www.copyright.gov/docs/sound/pre-72-report.pdf.*

[12] Thus, a person wishing to digitally perform a pre-1972 sound recording cannot rely on the Section 112 and 114 statutory licenses and must instead obtain a license directly from the owner of the sound recording copyright. *See* Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23073 (Apr. 17, 2013) (determination of the CRB finding that ''[t]he performance right granted by the copyright laws for sound recordings applies only to those recordings created on or after February 15, 1972'' and adopting provisions allowing exclusion of performances of pre-1972 sound recordings from certain statutory royalties).

[13] In 1998, as part of the DMCA, Congress amended Sections 112 and 114 of the Copyright Act to clarify that the digital sound recording performance right applies to services like webcasting. *See* Public Law 105–304, secs. 402, 405, 112 Stat. 2860, 2888, 2890.

[14] The Copyright Office has long supported the extension of the public performance right in sound

Continued

For certain uses, including those by satellite and internet radio, the digital public performance right for sound recordings is subject to statutory licensing in accordance with Sections 112 and 114 of the Act. Section 112 provides for a license to reproduce the phonorecords (sometimes referred to as ''ephemeral recordings'') necessary to facilitate a service's transmissions to subscribers, while Section 114 licenses the public performances of sound recordings resulting from those transmissions. This statutory licensing framework applies only to noninteractive (*i.e.,* radio-style) services as defined under Section 114; interactive (or on-demand services) are not covered. *See* 17 U.S.C. 112(e); 17 U.S.C. 114(d)(2), (f). For interactive services, sound recording owners negotiate licenses directly with users.

The rates and terms applicable to the public performance of sound recordings under the Section 112 and 114 licenses are established by the CRB. *See* 17 U.S.C. 801 *et seq.* The royalties due under these licenses are paid to an entity designated by the CRB—currently SoundExchange, Inc.—which collects, processes, and distributes payments on behalf of rights holders.[15]

Notably, under Section 114, the rate standard applicable to those satellite radio and music subscription services that existed as of July 31, 1998 (*i.e.,* ''preexisting'' services[16]) differs from that for other services such as internet radio.[17] Royalty rates for pre-existing satellite radio and subscription services are governed by the four-factor standard in Section 801(b) of the Act—that is, the standard that applies to the Section 115 license for musical works.[18] By contrast, under the terms of Section 114, rates and terms for noninteractive public performances via internet radio and other newer digital music services are to be determined by the CRB based on what a ''willing buyer'' and ''willing seller'' would have agreed to in the marketplace.[19]

Subjects of Inquiry

The Copyright Office seeks public input on the effectiveness of the current methods for licensing musical works and sound recordings. Accordingly, the Office invites written comments on the specific subjects above. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted.

Musical Works

1. Please assess the current need for and effectiveness of the Section 115 statutory license for the reproduction and distribution of musical works.

2. Please assess the effectiveness of the royalty ratesetting process and standards under Section 115.

3. Would the music marketplace benefit if the Section 115 license were updated to permit licensing of musical works on a blanket basis by one or more collective licensing entities, rather than on a song-by-song basis? If so, what would be the key elements of any such system?

4. For uses under the Section 115 statutory license that also require a public performance license, could the licensing process be facilitated by enabling the licensing of performance rights along with reproduction and distribution rights in a unified manner? How might such a unified process be effectuated?

5. Please assess the effectiveness of the current process for licensing the public performances of musical works.

6. Please assess the effectiveness of the royalty ratesetting process and standards applicable under the consent decrees governing ASCAP and BMI, as well as the impact, if any, of 17 U.S.C. 114(i), which provides that ''[l]icense fees payable for the public performance of sound recordings under Section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works.''

7. Are the consent decrees serving their intended purpose? Are the concerns that motivated the entry of these decrees still present given modern market conditions and legal developments? Are there alternatives that might be adopted?

Sound Recordings

8. Please assess the current need for and effectiveness of the Section 112 and Section 114 statutory licensing process.

9. Please assess the effectiveness of the royalty ratesetting process and standards applicable to the various types of services subject to statutory licensing under Section 114.

10. Do any recent developments suggest that the music marketplace might benefit by extending federal copyright protection to pre-1972 sound recordings? Are there reasons to continue to withhold such protection? Should pre-1972 sound recordings be included within the Section 112 and 114 statutory licenses?

11. Is the distinction between interactive and noninteractive services adequately defined for purposes of eligibility for the Section 114 license?

Platform Parity

12. What is the impact of the varying ratesetting standards applicable to the Section 112, 114, and 115 statutory licenses, including across different music delivery platforms. Do these differences make sense?

13. How do differences in the applicability of the sound recording

recordings to broadcast radio. *See Internet Streaming of Radio Broadcasts: Balancing the Interests of Sound Recording Copyright Owners With Those of Broadcasters: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Property of the H. Comm. on the Judiciary,* 108th Cong. 6–7 (2004) (statement of David Carson, General Counsel, U.S. Copyright Office), *available at http://www.copyright.gov/docs/carson071504.pdf.* Only a handful of countries lack such a right; in addition to the United States, the list includes China, North Korea, and Iran. This gap in copyright protection has the effect of depriving American performers and labels of foreign royalties to which they would otherwise be entitled, because even countries that recognize a public performance right in sound recordings impose a reciprocity requirement. According to one estimate, U.S. rights holders lose approximately $70 million each year in royalties for performances in foreign broadcasts. *See generally* Mary LaFrance, *From Whether to How: The Challenge of Implementing a Full Public Performance Right in Sound Recordings,* 2 Harv. J. of Sports & Ent. L 221, 226 (2011).

[15] The Act requires that receipts under the Section 114 statutory license be divided in the following manner: 50 percent to the owner of the digital public performance right in the sound recording, 2½ percent to nonfeatured musicians, 2½ percent to nonfeatured vocalists, and 45 percent to the featured recording artists. 17 U.S.C. 114(g)(2).

[16] 17 U.S.C. 114(j)(10), (11). Today, Sirius/XM is the only preexisting satellite service that seeks statutory licenses under Section 114. *See* Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23055 (Apr. 17, 2013). There are two preexisting subscription services, Music Choice and Muzak. *Id.*

[17]

[18] *See* 17 U.S.C. 114(f)(1), 801(b)(1).

[19] 17 U.S.C. 114(f)(2)(B) instructs the CRB to ''establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and willing seller.'' The provision further requires the CRB to consider ''whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from its sound recordings,'' and ''the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.'' *Id.*

For all types of services eligible for a Section 114 statutory license, the rates for the phonorecords (ephemeral recordings) used to operate the service are to be established by the CRB under Section 112 according to a ''willing buyer/willing seller'' standard. 17 U.S.C. 112(e). In general, the Section 112 rates have been a relatively insignificant part of the CRB's ratesetting proceedings, and have been established as a subset of the 114 rate. *See, e.g.,* Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 FR 23054, 23055–56 (Apr. 17, 2013).

public performance right impact music licensing?

Changes in Music Licensing Practices

14. How prevalent is direct licensing by musical work owners in lieu of licensing through a common agent or PRO? How does direct licensing impact the music marketplace, including the major record labels and music publishers, smaller entities, individual creators, and licensees?

15. Could the government play a role in encouraging the development of alternative licensing models, such as micro-licensing platforms? If so, how and for what types of uses?

16. In general, what innovations have been or are being developed by copyright owners and users to make the process of music licensing more effective?

17. Would the music marketplace benefit from modifying the scope of the existing statutory licenses?

Revenues and Investment

18. How have developments in the music marketplace affected the income of songwriters, composers, and recording artists?

19. Are revenues attributable to the performance and sale of music fairly divided between creators and distributors of musical works and sound recordings?

20. In what ways are investment decisions by creators, music publishers, and record labels, including the investment in the development of new projects and talent, impacted by music licensing issues?

21. How do licensing concerns impact the ability to invest in new distribution models?

Data Standards

22. Are there ways the federal government could encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process?

Other Issues

23. Please supply or identify data or economic studies that measure or quantify the effect of technological or other developments on the music licensing marketplace, including the revenues attributable to the consumption of music in different formats and through different distribution channels, and the income earned by copyright owners.

24. Please identify any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

Dated: March 11, 2014.

Jacqueline C. Charlesworth,

General Counsel and Associate, Register of Copyrights.

[FR Doc. 2014–05711 Filed 3–14–14; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–020]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 16, 2014. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepares appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments on the schedule.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001
Email: *request.schedule@nara.gov*
FAX: 301–837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless specified otherwise. An item in a schedule is media-neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an

agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Rural Development (N1–572–12–2, 6 items, 5 temporary items). Records related to program accounting and regulatory analysis of loans and mortgages, including correspondence and audit reports. Proposed for permanent retention are regulatory guidance records.

2. Department of Agriculture, Rural Development (N1–572–12–3, 14 items, 14 temporary items). Records related to policy analysis and risk management for debt restructuring loans, including studies, correspondence, audit reports, agreements, bankruptcy court plans, and analysis reports.

3. Department of Defense, National Security Agency (N1–457–13–1, 9 items, 3 temporary items). Records of the Information Assurance Directorate, including administrative manuals, administrative guidance, and non-significant working papers. Proposed for permanent retention are formal published standards, criteria, designs, specifications, memorandums, reports, and agreements.

4. Department of Health and Human Services, Indian Health Service (DAA–0513–2014–0001, 2 items, 2 temporary items). Medical staff credentialing and privileging records.

5. Department of Justice, Federal Bureau of Investigation (DAA–0065–2013–0002, 2 items, 2 temporary items). Non-record and transitory electronic mail messages.

6. Department of Justice, Office of Professional Responsibility (DAA–0060–2011–0027, 6 items, 3 temporary items). Records of misconduct allegations that include non-significant inquiries and investigations, and referrals to state bar and judicial authorities. Proposed for permanent retention are significant inquiries and investigations, whistleblower matters, and deputy counsel files.

7. Department of State, Bureau of Information and Resource Management (DAA–0059–2014–0002, 1 item, 1 temporary item). Master files of an electronic information system containing requests for routine administrative services.

8. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (DAA–0564–2013–0003, 81 items, 79 temporary items). Records include tax files, project plans, studies, applications, permits, and related correspondence. Proposed for permanent retention are directives, policies, organizational data, and reports.

9. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (DAA–0564–2013–0004, 8 items, 7 temporary items). Records of the Office of Chief Counsel including financial transaction files, legislative files, ethics records, memorandums, and general legal correspondence. Proposed for permanent retention are significant litigation files.

10. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (DAA–0564–2013–0005, 50 items, 44 temporary items). Records include training files, financial records, certificate and testing reports, applications, product files, and related records. Proposed for permanent retention are trade and negotiation agreements, historical and opinion files, and regulations files.

11. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (DAA–0564–2013–0008, 9 items, 4 temporary items). Congressional liaison files, routine correspondence, and related records. Proposed for permanent retention are policies, briefing books, high-level speeches, press releases, and congressional correspondence files.

12. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (DAA–0564–2013–0009, 2 items, 2 temporary items). Master files of an electronic information system used to process application and permit files.

13. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0013, 5 items, 5 temporary items). Records relating to taxpayer and employee privacy protection including incident case files, project files, and meeting summaries.

14. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0015, 2 items, 2 temporary items). Complaint case files relating to tax return preparer violations.

15. Consumer Financial Protection Bureau, Office of Consumer Response (DAA–0587–2014–0004, 1 item, 1 temporary item). Records of consumer complaints relating to financial institutions.

16. Court Services and Offenders Supervision Agency for the District of Columbia, Agency-wide (DAA–0562–2013–0010, 1 item, 1 temporary item). Master files of an electronic information system used to administer and track employee training courses, learning materials, and related data.

17. Export-Import Bank of the United States, Agency-wide (DAA–0275–2014–0001, 14 items, 9 temporary items). Records include drafts, marketing documents, credit reviews, insurance and pre-approval documents, agreements for financial services, and routine court documents. Proposed for permanent retention are significant policy and communication records including testimony, speeches, and reports.

18. National Archives and Records Administration, Government-wide (DAA–GRS–2013–0005, 8 items, 7 temporary items). General Records Schedule for records related to technology management, including records related to developing, operating, and maintaining computer software, systems, and infrastructure improvements; complying with information technology policies and plans; and maintaining data standards. Proposed for permanent retention is documentation related to electronic records that have been scheduled as permanent.

19. Office of the Director of National Intelligence, Front Office (N1–576–11–2, 10 items, 3 temporary items). Records include routine financial documents. Proposed for permanent retention are the files of senior leadership, including speeches, correspondence, and briefing books, and principal financial records.

20. Office of the Director of National Intelligence, Intelligence Advanced Research Projects Activity (N1–576–12–2, 15 items, 9 temporary items). Records include files related to routine decisions and events, outreach information, initial research studies, reference materials, interim reports, and non-substantive drafts and working papers. Proposed for permanent retention are files of senior officials, organization and management records, unique events records, program budget planning records, substantive working papers, and research program files.

21. Office of the Director of National Intelligence, Mission Support Division (N1–576–12–1, 17 items, 13 temporary items). Records include preliminary drafts and non-substantive working papers, internal special project and program records, insider threat case files, and routine administrative files.

Proposed for permanent retention are files of senior-level special programs and projects, service level agreements, policy files, and substantive working papers and drafts.

22. Office of the Director of National Intelligence, Office of the Inspector General (N1–576–11–11, 18 items, 9 temporary items). Records include routine case files and those which did not warrant investigation, annual award program records, reference files, and non-substantive working papers and drafts. Proposed for permanent retention are program files of the Inspector General; investigations, inspections, and audit reports; annual reports; community-level board and working group records; and substantive working papers and drafts.

23. Social Security Administration, Office of the Chief Actuary (DAA–0047–2013–0001, 15 items, 10 temporary items). Records of the Offices of Short Range and Long Range Estimates, including non-significant working, background, reference, and summary files. Proposed for permanent retention are legislation analysis records, significant background files, final reports, and actuarial studies.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2014–05716 Filed 3–14–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, March 20, 2014.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Interagency Rule, Minimum Requirements for Appraisal Management Companies.
2. Corporate Stabilization Fund Quarterly Report.

RECESS: 10:30 a.m.

TIME AND DATE: 10:45 a.m., Thursday, March 20, 2014.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Share Insurance Appeals (2). Closed pursuant to Exemption (4).
2. Share Insurance Appeals (2). Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2014–05909 Filed 3–13–14; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that nineteen meetings of the Humanities Panel will be held during April 2014 as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room, 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION:

Meetings

10. DATE: April 01, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 415

This meeting will discuss applications on the subject of Literature for the Scholarly Editions and Translations grant program, submitted to the division of Research Programs.

2. DATE: April 01, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 426

This meeting will discuss applications on the subject of History for the Media Projects: Production Grants program, submitted to the division of Public Programs.

3. DATE: April 02, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 426

This meeting will discuss applications on the subject of Cultural History/American Studies for the Media Projects: Production Grants program, submitted to the division of Public Programs.

4. DATE: April 02, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 415

This meeting will discuss applications on the subject of History for the Scholarly Editions and Translations grant program, submitted to the division of Research Programs.

5. DATE: April 02, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 315

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the division of Preservation and Access.

6. DATE: April 03, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 315

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the division of Preservation and Access.

7. DATE: April 03, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 426

This meeting will discuss applications on the subject of Art History for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the division of Public Programs.

8. DATE: April 03, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 415

This meeting will discuss applications on the subject of Arts and Literature for the Scholarly Editions and Translations grant program, submitted to the division of Research Programs.

9. DATE: April 08, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call

This meeting will discuss applications on the subject of History and Culture for the Museums, Libraries, and Cultural Organizations Implementation grant program, submitted to the division of Public Programs.

10. DATE: April 09, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 426

This meeting will discuss applications on the subject of History for the Media Projects: Production Grants program, submitted to the division of Public Programs.

11. DATE: April 09, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 415

This meeting will discuss applications on the subject of Philosophy and Religion for the Scholarly Editions and Translations grant program, submitted to the division of Research Programs.

12. DATE: April 10, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 415

This meeting will discuss applications on the subject of History and Literature for the Scholarly Editions and Translations grant program, submitted to the division of Research Programs.

13. DATE: April 10, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 426

This meeting will discuss applications on the subject of World History and Culture for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the division of Public Programs.

14. DATE: April 14, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 421

This meeting will discuss applications for the Landmarks of American History and Culture: Workshops for School Teachers grant program, submitted to the division of Education Programs.

15. DATE: April 15, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 421

This meeting will discuss applications for the Landmarks of American History and Culture: Workshops for School Teachers grant program, submitted to the division of Education Programs.

16. DATE: April 16, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 421

This meeting will discuss applications for the Landmarks of American History and Culture: Workshops for School Teachers grant program, submitted to the division of Education Programs.

17. DATE: April 17, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 421

This meeting will discuss applications for the Landmarks of American History and Culture: Workshops for School Teachers grant program, submitted to the division of Education Programs.

18. DATE: April 24, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call

This meeting will discuss applications for the National Digital Newspaper Program grant program, submitted to the division of Preservation and Access.

19. DATE: April 29, 2014
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call

This meeting will discuss applications on the subject of History and Culture for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: March 12, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–05829 Filed 3–14–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

ACTION: Notice.

SUMMARY: The National Mediation Board (NMB) invites comments on its proposal to revise a previously-approved information collection request as required by the Paperwork Reduction Act of 1995. In December of 2012, in response to amendments to the Railway Labor Act, the NMB published a Final Rule changing the showing of interest requirements for organizations seeking a representation election. As a result, the NMB is revising the Application for Investigation of Representation Dispute to reflect that all applicants must submit the same showing of interest. In addition, the NMB is revising the application by requiring applicants to attest that all of the information submitted is true to the best of the signer's knowledge. The revised application will also only provide space for one craft or class per application, thereby requiring a separate application for each craft or class.

DATES: Interested persons are invited to submit comments on or before May 16, 2014.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

The revisions to the Application for Investigation of Representation Dispute include the following:

1. The application will reflect the fact that applicants no longer have the option of submitting an application supported by a 35 percent showing of interest. All applicants will be required to indicate that the application is supported by a 50 percent showing of interest. In response to 2012 amendments to the Railway Labor Act, the NMB published a Final Rule on December 21, 2012 reflecting the changed showing of interest requirements. 29 CFR 1206.2. This revision will not change the burden to the applicant in completing the form.

2. The application will include the following attestation: ''Federal Law prohibits knowingly and willfully making materially false, fictitious, or fraudulent statements or representations in any matter within the jurisdiction of the U.S. Government. 18 U.S.C. 1001. This includes the information provided on this application as well as the accompanying showing of interest.''

This revision will not change the burden to the applicant in completing the form.

3. The revised application will require applicants to complete a separate application for each craft or class. Applicants rarely list more than one established craft or class on each application. This revision should not have an impact on the burden to applicants or increase the number of applications received by the NMB.

Currently, the NMB is soliciting comments concerning the proposed revisions of the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

In addition, the NMB requests comments on any substantive and legal issues raised by the changes to the Application for Investigation of Representation Dispute discussed above, especially those raised by the inclusion of the attestation of the truthfulness of the information provided.

Dated: March 11, 2014.

Samantha Williams,

Acting Director, Office of Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Revision.

Title: Application for Investigation of Representation Dispute,

OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.00.

1. *Abstract:* When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html.* The application requires the following information: the name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources will be required to conduct an investigation.

2. The application form provides necessary information to the NMB so that it can determine the amount of staff and resources required to conduct an investigation and fulfill its statutory responsibilities. Without this information, the NMB would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

3. There is no improved technological method for obtaining this information. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

4. There is no duplication in obtaining this information.

5. Rarely are representation elections conducted for small businesses. Carriers/employers are not permitted to request our services regarding representation investigations. The labor organizations, which are the typical requesters, are national in scope and would not qualify as small businesses. Even in situations where the invocation comes from a small labor organization, we believe the burden in completing the application form is minimal and that no reduction in burden could be made.

6. The NMB is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB has no ability to control the frequency, technical, or legal obstacles, which would reduce the burden.

7. The information requested by the NMB is consistent with the general information collection guidelines of CFR 1320.6. The NMB has no ability to control the data provided or timing of the invocation. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

8. No payments or gifts have been provided by the NMB to any respondents of the form.

9. There are no questions of a sensitive nature on the form.

10. The total time burden on respondents is 17.00 hours annually—this is the time required to collect information. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information.

Number of respondents per year: 68

Estimated time per respondent: 15 minutes

Total Burden hours per year: 17 (68 × .25)

11. The total collection and mail cost burden on respondents is estimated at $584.80 annually ($552.16 time cost burden + $32.64 mail cost burden.)

a. The respondents will not incur any capital costs or start up costs for this collection.

b. Cost burden on respondents—detail:

The total time burden annual cost is $552.16

Time Burden Basis: The total hourly burden per year, upon respondents, is 17

Staff cost = $552.16

$32.48 per hour—based on mid level clerical salary

$32.48 × 17 hours per year = $552.16

We are estimating that a mid-level clerical person, with an average salary of $32.48 per hour, will be completing the ''Application for Investigation of Representation Dispute'' form. The total burden is estimated at 17 hours, therefore, the total time burden cost is estimated at $552.16 per year.

The total annual mailing cost to respondents is $32.64

Number of applications mailed by respondents per year: 68

Total estimated cost: $32.64 (68 × .48 stamp)

The collection of this information is not mandatory; it is a voluntary request from airline and railroad carrier employees seeking to invoke an investigation of a representation

dispute. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information. However, the estimated hour burden costs of the respondents may vary due to the complexity of the specific question in dispute. The revision of the form requiring a new application for every craft or class will have little effect on the number of application submitted. In 2012 and 2013, no applications were filed that included a request for representation services for more than one craft or class.

The application form is available from the NMB's Office of Legal Affairs and is also available on the Internet at *http://www.nmb.gov/representation/rapply.html*

12. The total annualized Federal cost is $846.98. This includes the costs of printing and mailing the forms upon request of the parties. The completed applications are maintained by the Office of Legal Affairs.

a. Printing cost: $ 80.00.

b. Mailing costs: $ 9.54.

Basis (mail cost): Forms are requested approximately 3 times per year and it takes 5 minutes to prepare the form for mail.

Postage cost = $1.44
3 (times per year) × .48 (cost of postage)
Staff cost = $8.10
$.54 per minute (GS 9/10 $64,787 = $32.48 per hr. ÷ 60)
$.54 × 5 minutes per mailing = $2.70
$2.70 × 3 times per year = $8.10
Total Mailing Costs = $9.54

c. Processing Cost=$756.00.

Basis (processing cost): Representation is requested approximately 70 times oer year and it takes 20 minutes to process each application.

Staff Cost= $756.00
$.54 per minute (GS 9/10 $64,787 = $32.48 per hr. ÷ 60)
$.54 × 20 minutes per mailing = $10.80
$10.80 × 70 times per year = $756.00

13. Item 13—no change in annual reporting and recordkeeping hour burden.

14. The information collected by the application will not be published.

15. The NMB will display the OMB expiration date on the form.

16(a)—the form does not reduce the burden on small entities; however, the burden is minimized and voluntary.

16(b)—the form does not indicate the retention period for record keeping requirements.

16(c)—the form is not part of a statistical survey.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the email address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, as well as comments on any legal and substantive issues raised, should be directed to Samantha Williams at 202–692–5010 or via Internet address *williams@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2014–05726 Filed 3–14–14; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATE: Weeks of March 17, 24, 31, April 7, 14, 21, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 17, 2014

Friday, March 21, 2014

1 p.m. Briefing on Waste Confidence Rulemaking (Public Meeting); (Contact: Andrew Imboden, 301–287–9220)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 24, 2014—Tentative

There are no meetings scheduled for the week of March 24, 2014.

Week of March 31, 2014—Tentative

There are no meetings scheduled for the week of March 31, 2014.

Week of April 7, 2014—Tentative

Thursday April 10, 2014

9 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting); (Contact: Cindy Flannery, 301–415–0223).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 14, 2014—Tentative

There are no meetings scheduled for the week of April 14, 2014.

Week of April 21, 2014—Tentative

There are no meetings scheduled for the week of April 21, 2014.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: March 13, 2014.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–05915 Filed 3–13–14; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0051; IA–12–045]

In the Matter of Michael P. Cooley; Order Prohibiting Involvement in NRC-Licensed Activities

I

Michael P. Cooley is a former Environmental Health and Safety Specialist, for Shaw, Stone & Webster (Shaw) at South Carolina Electric & Gas Company's Virgil C. Summer Nuclear Station (Licensee). The licensee is the holder of License No. NPF–12 issued by the U.S. Nuclear Regulatory

Commission (NRC) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) on August 6, 1982, and renewed on April 23, 2004. The license authorizes the operation of the Virgil C. Summer Nuclear Station (facility) in accordance with the conditions specified therein. The facility is located on the licensee's site in Jenkinsville, South Carolina.

II

On January 16, 2013, an investigation was completed by the NRC's Office of Investigations (OI). The purpose of the investigation was to review the facts and circumstances surrounding Mr. Michael P. Cooley's actions with respect to his completion of a V. C. Summer Personnel History Questionnaire (PHQ) to obtain unescorted access authorization (UAA) to the facility.

In Section III of the PHQ titled ''Criminal History Self-Disclosure,'' Mr. Cooley answered ''no'' to a question that, in part, asked, ''Have you ever been held, detained, taken into custody, charged, arrested, indicted, convicted for a violation of law, regulation, or ordinance (e.g., felony, misdemeanor, traffic, etc.), or do you have such a case pending or currently under indictment, on probation, parole, work release, or subject to any other control of court?''

During the subsequent background investigation conducted by the licensee in August and September 2010, a criminal record search returned a U.S. Federal Bureau of Investigation (FBI) record dated August 31, 2010, which revealed Mr. Cooley had been arrested on March 17, 2010, in Lucedale, Mississippi and charged with four counts of arson. The FBI record also revealed that the arson charges had been bound over to a grand jury in Mississippi, and were pending at the time Mr. Cooley completed the PHQ. The licensee's access authorization staff questioned Mr. Cooley about the failure to list the arrest and charges on the PHQ. Mr. Cooley explained his lawyer said there was no need to list the arrest because the charges were dismissed. The licensee's access staff accepted this explanation and asked Mr. Cooley to provide a document showing the charges were dismissed. Mr. Cooley fabricated a document that falsely stated the arson charges had been dismissed and he submitted it to the licensee's access authorization staff. The access authorization staff reviewed and adjudicated the forged document and found it acceptable. Mr. Cooley was granted the UAA to the V. C. Summer Nuclear Station. Mr. Cooley was employed at the site from August 30, 2010 until March 3, 2011, when the licensee learned the arson charges had not been dismissed, but were still pending. Mr. Cooley was terminated.

During questioning by the OI, Mr. Cooley admitted he was deliberately untruthful when answering ''no'' to the criminal history question in the PHQ, and admitted to deliberately fabricating the court record to conceal potentially disqualifying information.

In a letter dated June 5, 2013, the NRC provided Mr. Cooley the results of the OI investigation. The letter informed Mr. Cooley the NRC was considering escalated enforcement action against him for: (1) The deliberate failure to disclose an arrest for arson in the PHQ criminal history, information that was necessary for access staff to consider in making determinations regarding his trustworthiness and reliability, in apparent violation of 10 CFR 73.56(d)(2); and (2) the deliberate submittal of information he knew to be incomplete or inaccurate, in apparent violation of the requirements of 10 CFR 50.5(a)(2). Specifically, to support his assertion that arson charges had been dismissed, Mr. Cooley submitted a forged document dated September 14, 2010, that falsely stated arson charges had been dismissed by a Mississippi county court. At the time the document was submitted to the licensee's access authorization staff, the arson charges were pending. This information was material because it formed the basis for the licensee's determination that Mr. Cooley was trustworthy, reliable, and suitable for the granting of UAA. The NRC regulations at 10 CFR 73.56(c) require that licensees provide high assurance that individuals granted unescorted access are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety, or the common defense and security, including the potential to commit radiological sabotage.

The NRC's letter dated June 5, 2013, offered Mr. Cooley a choice to respond to the apparent violations within 30 days of the date of that letter, to attend a Predecisional Enforcement Conference, or to request Alternative Dispute Resolution (ADR) and the use of mediation to resolve any possible disagreement over: (1) Whether the violation occurred; and (2) the appropriate enforcement action. During a telephone conversation with the NRC's representatives on June 14, 2013, Mr. Cooley stated that he did not intend to provide a written response or request a Predecisional Enforcement Conference or ADR.

III

Based on the above, the NRC has concluded that Mr. Michael P. Cooley, a former Environmental Health and Safety Specialist for Shaw, Stone & Webster (Shaw) at South Carolina Electric & Gas Company's Virgil C. Summer Nuclear Station, engaged in deliberate misconduct that resulted in a violation of the requirements at 10 CFR 73.56(d)(2). In addition, Mr. Cooley deliberately submitted to the licensee information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of the NRC regulations at 10 CFR 50.5(a)(2). Mr. Cooley's deliberate misconduct put the License in violation of 10 CFR 73.56 and 10 CFR 50.9.

The NRC must be able to rely on a licensee, its employees, and contractors to comply with the NRC's requirements, including the requirement that information provided to the NRC be complete and accurate in all material respects. Mr. Cooley's misstatements on his PHQ and his preparation and submission of a fabricated court document caused the licensee to violate 10 CFR 73.56(d)(2) and 10 CFR 50.9. Mr. Cooley's deliberate misconduct raises serious doubt as to whether he can be relied upon to comply with the NRC's regulatory requirements and to provide complete and accurate information to the NRC.

Consequently, I lack reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected, if Mr. Cooley were permitted to be involved in NRC-licensed activities. Therefore, the public health and safety, and the common defense and security of the nation require that Mr. Cooley be prohibited from any involvement in NRC-licensed activities for a period of 5 years following the effective date of this Order. Additionally, Mr. Cooley is required to notify the NRC if he is employed in NRC-licensed activities following the 5-year prohibition period; this restriction is for a period of 1 year.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Mr. Cooley is prohibited for a period of 5 years, from the effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed

activities are activities conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. This Order shall be effective 30 days following its issuance and shall remain in effect for a period of 5 years.

3. If Mr. Cooley is currently involved with NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of his employer, and provide a copy of this Order to the employer.

4. For a period of 1 year after the 5-year period of prohibition has expired, Mr. Cooley shall, within 30 days of acceptance of his first employment offer involving NRC-licensed activities, or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is or will be involved in NRC-licensed activities. In the notification, Mr. Cooley shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with the applicable NRC's requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Cooley of good cause.

V

Mr. Michael P. Cooley is not required to respond to this Order; however, if he chooses to respond, he must submit a written answer to this Order under oath or affirmation within 30 days of issuance in accordance with 10 CFR 2.202.

Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its issuance. In addition, Mr. Cooley, and any other person adversely affected by this Order, may request a hearing on this Order within 30 days of its issuance date. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and include a statement of good cause for the extension.

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 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 (1) request 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/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC'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 public 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 or 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's 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 to 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 electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and constitute a Fair Use application.

If a person other than Mr. Cooley requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the issuance date without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 10th day of March 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2014–05794 Filed 3–14–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03029462; NRC–2014–0046]

Department of the Navy; Naval Postgraduate School

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for alternate decommissioning schedule; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a request for an alternate decommissioning schedule from the Department of the Navy (Navy) for its Naval Postgraduate School (PGS) site, located in Monterey, California, permitted under the Navy's Master Materials License (MML) No. 45–23645–01NA. Approval of the request would extend the time period for the Navy to submit a decommissioning plan and initiate decommissioning activities at the PGS site.

DATES: Comments must be filed by May 16, 2014. A request for a hearing or petition for leave to intervene must be filed by May 16, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Orysia Masnyk Bailey, Decommissioning and Technical Support Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 2100 Renaissance Boulevard, King of Prussia, Pennsylvania 19468; telephone: 864–427–1032; fax number: 610–680–3597; email: *OrysiaMasnykBailey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0046 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0046.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- 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–2014–0046 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit

comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC received, by letter dated August 9, 2013 (ADAMS Accession No. ML13249A303), a license amendment application from the Navy for its PGS site, located in Monterey, California, requesting to extend the time for submitting a decommissioning plan. The PGS possesses a Type A broad scope permit issued under the Navy's MML No. 45–23645–01NA. Approval of the request would extend the time period for the Navy to submit a decommissioning plan and initiate decommissioning activities at the PGS site.

An NRC administrative completeness review, documented in a letter to the Navy dated January 14, 2014 (ADAMS Accession No. ML14028A533), found the application acceptable to begin a technical review. If the NRC approves the request, the approval will be documented in an amendment to the Navy's MML No. 45–23645–01NA. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action and who wishes to participate as a party in the proceeding may file a written request for a hearing and a petition for leave to intervene with respect to issuance of the license amendment request. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission'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 located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. 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/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall 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 petition should 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 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/petitioner's interest. The petition must also identify the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to 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.

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.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC 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.

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 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/apply-certificates.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 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, 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.

Dated at King of Prussia, Pennsylvania, this 6th day of March 2014.

For the Nuclear Regulatory Commission.

Marc S. Ferdas,

Chief, Decommissioning and Technical Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2014–05792 Filed 3–14–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03029462; NRC–2014–0048]

Department of the Navy; Naval Air Warfare Center Weapons Division China Lake

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for alternate decommissioning schedule; opportunity to comment, request a hearing and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a request for an alternate decommissioning schedule from the Department of the Navy (Navy) for its Naval Air Warfare Center Weapons Division China Lake (China Lake) site,

located in China Lake, California, permitted under the Navy's Master Materials License (MML) No. 45–23645–01NA. Approval of the request would extend the time period for the Navy to submit a decommissioning plan and initiate decommissioning activities at China Lake.

DATES: Comments must be filed by May 16, 2014. A request for a hearing or petition for leave to intervene must be filed by May 16, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0048. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Orysia Masnyk Bailey, Health Physicist, Decommissioning and Technical Support Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 2100 Renaissance Boulevard, King of Prussia, Pennsylvania 19468; telephone: 864–427–1032; fax number: 610–680–3597; email: *OrysiaMasnykBailey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0048 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0048.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *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–2014–0048 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC received, by letter dated August 9, 2013 (ADAMS Accession No. ML13249A290), a license amendment application from the Navy for its China Lake site located in China Lake, California, requesting to extend the time for submitting a decommissioning plan. China Lake has a ''possession only'' permit for the storage of depleted uranium, issued under the Navy's Master Materials License No. 45–23645–01NA. Approval of the request would extend the time period for the Navy to submit a decommissioning plan and initiate decommissioning activities at China Lake.

An NRC administrative completeness review, documented in a letter to the Navy dated January 14, 2014 (ADAMS Accession No. ML14028A504), found the application acceptable to begin a technical review. If the NRC approves the request, the approval will be documented in an amendment to the Navy's MML No. 45–23645–01NA. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action and who wishes to participate as a party in the proceeding may file a written request for a hearing and a petition for leave to intervene with respect to issuance of the license amendment request. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission'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 located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor) Rockville, Maryland 20852. 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/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall 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 petition should 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 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/petitioner's interest. The petition must also identify the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to 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.

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.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC 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.

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 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/apply-certificates.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 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, 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.

Dated at King of Prussia, Pennsylvania, this 6th day of March 2014.

For the Nuclear Regulatory Commission.

Marc S. Ferdas,

Chief, Decommissioning and Technical Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2014–05786 Filed 3–14–14; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans (OMB control number 1212–0017; expires March 31, 2014). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by April 16, 2014.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Comments received will be posted to *www.pbgc.gov.*

The collection of information may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulation on Liability for Termination of Single-Employer Plans can be found at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Dan Liebman, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, *liebman.daniel@pbgc.gov* or 202–326–4400, ext. 6510. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify PBGC and to submit net worth information. This information is necessary to enable PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017 through March 31, 2014. PBGC is requesting that OMB extend its approval for another three years. 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.

PBGC estimates that an average of thirty contributing sponsors or controlled group members per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $4,200 per respondent, with an average total annual burden of 360 hours and $126,000.

Issued in Washington, DC, this 12 day of March 2014.

Philip Hertz,

Acting General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–05791 Filed 3–14–14; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17d–1, OMB Control No. 3235–0562, SEC File No. 270–505.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the ''Act'') prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d–1 (17 CFR 270.17d–1) prohibits an affiliated person of or principal underwriter for any fund (a ''first-tier affiliate''), or any affiliated person of such person or underwriter (a ''second-tier affiliate''), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement ''an application regarding [the transaction] has been filed with the Commission and has been granted by an order.'' In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d–1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with ''portfolio affiliates'' (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (*e.g.,* the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a ''financial interest'' in a party to the transaction. The rule excludes from the definition of ''financial interest'' any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d–1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d–1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d–1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 13 funds file applications under section 17(d) and rule 17d–1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d–1's application process to be 2,002 hours at a cost of $726,206.[1] The Commission, therefore, requests authorization to increase the inventory of total burden hours per year for all funds under rule 17d–1 from the current authorized burden of 1,232 hours to 2,002 hours. The increase is due to an increase in the number of funds that filed applications for exemptions under rule 17d–1.

As noted above, the Commission staff understands that funds that file an application under rule 17d–1 generally use outside counsel to assist in preparing the application. The staff estimates that, on average, funds spend an additional $93,131 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d–1 is $1,210,703.[2]

We estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d–1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 2,002 hours and the total annual cost burden is estimated to be $1,024,441.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

[1] The Commission staff estimates that a senior executive, such as the fund's chief compliance officer, will spend an average of 62 hours and a mid-level compliance attorney will spend an average of 92 hours to comply with this collection of information: 62 hours + 92 hours = 154 hours. 13 funds × 154 burden hours = 2,002 burden hours. The Commission staff estimate that the chief compliance officer is paid $441 per hour and the compliance attorney is paid $310 per hour. ($441 per hour × 62 hours) + ($310 per hour × 92 hours) = $55,862 per fund. $55,862 × 13 funds = $726,206. The $441 and $310 per hour figures are based on salary information compiled by SIFMA's *Management & Professional Earnings in the Securities Industry, 2012.* The Commission staff has modified SIFMA's information to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[2] The estimate is based on the following calculation: $93,131 × 13 funds = $1,210,703.

information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05755 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71684; File No. SR–NYSE–2014–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Price List and To Make the Fee Changes Operative March 1, 2014

March 11, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 24, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (i) amend the fee for certain market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders; (ii) amend the fee for Midpoint Passive Liquidity (''MPL'') orders; (iii) add a new credit for certain non-Floor broker transactions; (iv) increase the fee for certain non-Floor broker transactions; (v) increase the fee for certain Floor broker transactions; (vi) introduce additional credits for certain Floor broker transactions; (vii) increase the fee for certain Designated Market Maker (''DMM'') transactions; (viii) increase the credits for certain DMM transactions; (ix) introduce a monthly DMM credit for certain securities; and (x) revise the credits for Supplemental Liquidity Providers (''SLPs''). The proposed fees would be operative on March 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (i) amend the fee for certain MOC and LOC orders; (ii) amend the fee for MPL orders; (iii) add a new credit for certain non-Floor broker transactions; (iv) increase the fee for certain non-Floor broker transactions; (v) increase the fee for certain Floor broker transactions; (vi) introduce additional credits for certain Floor broker transactions; (vii) increase the fee for certain DMM transactions; (viii) increase the credits for certain DMM transactions; (ix) introduce a monthly DMM credit for certain securities; and (x) revise the credits for SLPs. The proposed fees would be operative on March 1, 2014.

MOC and LOC Orders

Currently, the Exchange charges $0.00055 per share per transaction (charged to both sides) for all MOC and LOC orders if a member organization executes an average daily trading volume (''ADV'') of MOC and LOC activity on the Exchange in that month of at least 0.375% of consolidated ADV in NYSE-listed securities during the billing month (''NYSE CADV''). The Exchange proposes to add an alternative way to qualify for the $0.00055 per share per transaction fee. Specifically, the Exchange proposes to charge $0.00055 per share per transaction (charged to both sides) for all MOC and LOC orders if a member organization executes an ADV of MOC and LOC activity on the Exchange in that month of at least 0.300% of NYSE CADV plus an ADV of total close (MOC/LOC and executions at the close) activity on the Exchange in that month of at least 0.475% of NYSE CADV.

The Exchange also proposes to make a non-substantive change to the Price List to delete the language specifically excluding odd lots through January 31, 2014, as that language is no longer operative.[3]

MPL Orders

The Exchange currently charges $0.0025 per share for all MPL orders that remove liquidity from the Exchange if the security is priced $1.00 or more, for all participants, including Floor brokers and DMMs. The Exchange proposes to increase the fee for MPL orders that remove liquidity from the Exchange if the security is priced $1.00 or more to $0.0026 per share. The Exchange notes that this fee increase is consistent with the other proposed fee increases for taking liquidity, discussed below.[4]

Non-Floor Brokers

The Exchange proposes to establish a $0.0019 per share credit per transaction for all non-Floor broker transactions that add liquidity to the Exchange if the member organization executes an ADV during the billing month of at least 1 million shares in Retail Price Improvement Orders (''RPIs'') [5] and a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70997 (Dec. 5, 2013), 78 FR 75432 (Dec. 11, 2013) (SR–NYSE–2013–78).

[4] MPL Orders are not be eligible for any tiered or additional credits or reduced fees even if the MPL Orders contribute to a member organization qualifying for an additional credit. As such, the Exchange proposes to make conforming changes consistent with this approach. Where the MPL Order fee or credit does not differ from the current fee or credit, the Exchange has not proposed a change to the Price List.

[5] ''RPI'' is defined in NYSE Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid or best protected offer, as such terms

Customer Electronic Adding ADV[6] during the billing month of at least 5 million shares.[7] The Exchange notes that a member organization's provide volume in RPIs would also count toward the 5 million share Customer Electronic Adding ADV threshold if the RPIs meet the definition of Customer Electronic Adding ADV. For example, if a member organization executes an ADV of 1.1 million shares in RPIs and only 500,000 shares of that provide volume adds liquidity in customer electronic orders to the Exchange, excluding any liquidity added by a Floor broker, DMM, or SLP, then only those 500,000 shares would count toward the 5,000,000 share threshold.

Currently, the Exchange charges $0.0025 per share for all non-Floor broker transactions that take liquidity from the Exchange if the security is priced $1.00 or more. The Exchange proposes to increase this fee to $0.0026 per share.

Floor Brokers

Currently, the Exchange charges $0.0020 per share for all Floor broker transactions that take liquidity from the Exchange from any member organization executing an ADV in such Floor broker transactions that is at least 10% more than their May 2013 ADV for such Floor broker transaction if the security is priced $1.00 or more. The Exchange currently charges $0.0022 per share for all other Floor broker transactions that take liquidity from the Exchange if the security is priced $1.00 or more. The Exchange proposes to increase these fees from $0.0020 to $0.0021 per share and $0.0022 to $0.0023 per share, respectively.[8]

In addition, the Exchange currently offers a $0.0019 credit per share for executions of orders sent to the Floor broker for representation on the Exchange when adding liquidity to the Exchange. The Exchange proposes to offer additional tiered credits for executions of orders sent to the Floor broker for representation on the Exchange when adding liquidity to the Exchange if the member organization adds liquidity to the Exchange by the Floor broker during the billing month that meets the following thresholds: (i) A $0.0020 credit for adding at least 2 million shares ADV; (ii) a $0.0021 credit for adding at least 4 million shares ADV; and (iii) a $0.0023 credit for adding at least 14 million shares ADV.[9]

DMMs

Currently, the Exchange charges $0.0025 per share for all DMM transactions that take liquidity from the Exchange if the security is priced $1.00 or more. The Exchange proposes to increase this fee to $0.0026 per share.

In addition, DMMs are currently eligible for a per share credit when adding liquidity in shares of each More Active Security[10] if the More Active Security has a stock price of $1.00 or more, the DMM meets both the More Active Securities Quoting Requirement[11] and the More Active Securities Quoted Size Ratio Requirement,[12] and the DMM's providing liquidity meets certain thresholds, as follows: $0.0026 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;[13] or $0.0030 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 Exchange proposes to raise the $0.0026 per share credit to $0.0029 per share and raise the $0.0030 per share credit to $0.0032 per share.[14]

The Exchange is also proposing to pay DMMs a monthly credit of $200, in addition to the current rate on transactions, for each security that has a consolidated ADV of less than 250,000 shares during the billing month in any month in which the DMM meets the Less Active Securities Quoting Requirement.[15] This additional flat dollar credit will supplement the DMM credit in securities that do not trade actively and will be applicable to all Exchange-listed securities regardless of price.

SLPs

The Exchange currently offers a $0.0023 ($0.0018 for Non-Displayed Reserve Orders) credit per share per transaction for SLPs that add liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated) (''Assigned Security Quoting Requirement'') and (ii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV of more than 0.22% of NYSE CADV. The Exchange also offers a $0.0027 ($0.0022 for Non-Displayed Reserve Orders) credit per share per transaction for SLPs that add liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more Assigned Security Quoting Requirement, (ii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV of more than 0.22% of NYSE CADV, (iii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV during the billing month that is at least a 0.18% increase over the SLP's September 2012 Adding ADV, and (iv) has a minimum provide ADV for all assigned SLP securities of 12 million shares.

The Exchange proposes to revise these SLP credits and offer an additional credit. First, the Exchange proposes to reduce the second requirement to receive the $0.0023 ($0.0018 for Non-Displayed Reserve Orders) credit per share from an ADV of more than 0.22% of NYSE CADV to an ADV of more than 0.20% of NYSE CADV. Second, the Exchange proposes to add an additional credit of $0.0025 ($0.0020 for Non-Displayed Reserve Orders) per share per

are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such.

[6] ''Customer Electronic Adding ADV'' is ADV that adds liquidity in customer electronic orders to the Exchange and excludes any liquidity added by a Floor broker, DMM, or SLP. *See* Price List.

[7] The applicable $0.0015 MPL order credit would not change as a result of this proposal.

[8] The applicable $0.0026 MPL order fee would not [sic] change as a result of this proposal.

[9] The applicable $0.0015 MPL order credit would not change as a result of this proposal.

[10] A ''More Active Security'' is one with a consolidated ADV in the previous month equal to or greater than one million shares. *See* Price List.

[11] A DMM meets the ''More Active Securities Quoting Requirement'' when a 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. *See* Price List.

[12] A DMM meets the ''More Active Securities Quoted Size Ratio Requirement'' when the DMM Quoted Size for an applicable month is at least 15% of the NYSE Quoted Size. 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. *See* Price List at n. 8.

[13] 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.

[14] The applicable $0.0015 MPL order credit would not change as a result of this proposal.

[15] The DMM meets the ''Less Active Securities Quoting Requirement'' when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of $1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

transaction for SLPs that add liquidity to the Exchange in securities with a per share price of $1.00 or more, if the SLP (i) meets the 10% average or more Assigned Security Quoting Requirement and (ii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV of more than 0.30% of NYSE CADV. Lastly, the Exchange proposes to raise the $0.0027 ($0.0022 for Non-Displayed Reserve Orders) credit to $0.0029 ($0.0024 for Non-Displayed Reserve Orders), increase the second requirement from an ADV of more than 0.22% of NYSE CADV to an ADV of more than 0.55% of NYSE CADV, and eliminate the third and fourth requirements to receive the credit.[16] The Exchange notes that the first requirement for the proposed credits would be the same, but the second requirement would increase as the credits increase. The Exchange would also make a conforming change to footnote 8 in the Price List to reflect the proposed revisions to the thresholds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] 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 that the proposed new method to qualify for the $0.00055 per share per transaction fee for MOC and LOC orders is reasonable because it would provide member organizations with an alternative way in which to qualify for the reduced fee, thereby encouraging member organizations to provide higher volumes of MOC and LOC orders and total close activity, which will contribute to the quality of the Exchange's closing auction and provide market participants with MOC and LOC orders, or whose orders are swept into the close, with a greater opportunity for execution. The Exchange believes that the proposed tier is equitable and not unfairly discriminatory because all member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions. The Exchange believes that it is equitable and not unfairly discriminatory to charge a lower fee to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, which benefits all market participants.

The Exchange believes that raising the taking liquidity fee for MPL orders is reasonable because the fee would be the same as the fee that would otherwise apply for all other non-Floor broker transactions. The Exchange notes that the proposed fee is less than the fee charged by at least one other exchange for MPL orders.[19] The Exchange also believes that the proposed fee increase is equitable and not unfairly discriminatory because all market participants that use the MPL order type will pay the same fee.

The Exchange believes that the proposed credit for member organizations that execute an ADV during the billing month of at least 1 million shares in RPIs and a Customer Electronic Adding ADV during the billing month of at least 5 million shares is reasonable, equitable, and not unfairly discriminatory because it will incentivize member organizations to submit RPIs and, therefore, contribute to robust amounts of RPI liquidity being available for interaction with retail orders submitted by other market participants. The proposed credit would also encourage overall liquidity in customer electronic orders that add liquidity to the Exchange. The Exchange believes that raising the taking liquidity fee for non-Floor brokers is reasonable in light of the increased credits the Exchange is proposing in order to increase liquidity on the Exchange. The Exchange believes the increased fee is equitable and not unfairly discriminatory because all similarly situated non-Floor brokers will be subject to the same fee structure.

The Exchange believes that the proposed tiered credits for executions of orders sent to the Floor broker for representation on the Exchange are reasonable because they encourage additional displayed liquidity on the Exchange. The Exchange believes the new credits are equitable and not unfairly discriminatory because they allocate a higher rebate to Floor brokers that make significant contributions to market quality and that contribute to price discovery by providing higher volumes of liquidity. The Exchange believes that raising the taking liquidity fees for Floor brokers is reasonable because it is designed to strike a balance in the fees and incentives offered by the Exchange for taking and providing liquidity. The Exchange believes the increased fees are equitable and not unfairly discriminatory because all similarly situated Floor brokers will be subject to the same fee structure.

The Exchange believes that increasing the credits for DMM transactions in More Active Securities is reasonable because it will encourage greater liquidity and competition in such securities on the Exchange. The Exchange believes that the proposed monthly credit of $200 is reasonable because it will increase the incentive to add liquidity across thinly traded securities where there may be fewer liquidity providers. The Exchange believes it is equitable and not unfairly discriminatory to allocate higher or additional credits to DMMs rather than to other market participants because DMMs have higher quoting obligations, and in turn provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants. The Exchange believes that raising the taking liquidity fee for DMMs is reasonable in light of the increased credits the Exchange is proposing in order to increase liquidity on the Exchange. The Exchange believes the increased fee is equitable and not unfairly discriminatory because all similarly situated DMMs will be subject to the same fee structure.

The Exchange believes that the proposed credits for SLPs that add liquidity to the Exchange with a per share price of $1.00 or more if the SLP meets certain requirements is reasonable because it would create an added incentive for SLPs to provide liquidity in assigned securities. This is reasonable because the added incentive created by the availability of the increased credits is reasonably related to an SLP's liquidity obligations on the Exchange. The corresponding increase in the credit applicable to Non-Displayed Reserve Orders is also reasonable because it would maintain the existing $0.0005 difference between these order types and all other order types (excluding MPL orders). The Exchange believes that the proposed increase in the credits is equitable and not unfairly discriminatory because, as is currently the case under the existing rates, the credits are available to all qualifying SLPs on an equal basis and because the

[16] The applicable $0.0015 MPL order credit would not change as a result of this proposal.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] For Tape A Securities under its Tier 1, Tier 2, and Basic Rate Tier, the Exchange's affiliate, NYSE Arca Equities, Inc., currently charges $0.0030 per share for all MPL orders that remove liquidity. *See* NYSE Arca Equities, Inc. Schedule of Fees and Charges, *available at https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__for_2–1–14.pdf.*

credits are reasonably related to the value to the Exchange's market quality associated with higher volumes. In addition, the Exchange believes that the proposed credits are reasonable, equitable, and not unfairly discriminatory because they would provide a simplified approach that will automatically adjust based on prevailing market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] 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 believes that the proposed fees for certain MOC and LOC orders will not place a burden on competition because the Exchange is establishing an alternative way for member organizations to achieve the reduced fee, which would allow more member organizations to compete and qualify for the fee. The Exchange believes that the new and revised fees and credits for non-Floor brokers, Floor brokers, and DMMs would not burden competition. Rather, the Exchange believes that the proposed changes strike an appropriate balance between fees and credits, which will create an incentive to submit orders to the Exchange, thereby promoting competition. The revised credits for certain SLP executions would not burden competition because all SLPs would have the opportunity to qualify for the credits. The credits would create an added incentive for SLPs to provide liquidity on the Exchange, thereby also contributing to the Exchange's competitiveness with other markets.

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 or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

[20] 15 U.S.C. 78f(b)(8).

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)[21] of the Act and subparagraph (f)(2) of Rule 19b–4[22] 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)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2014–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–09. 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 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–NYSE–2014–09 and should be submitted on or before April 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05750 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71686; File No. SR–NYSEArca–2014–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, Relating to the Listing and Trading of Reality Shares Isolated Dividend Growth ETF Under NYSE Arca Equities Rule 8.600

March 11, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on February 25, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, which filing was amended and replaced in its entirety by Amendment No. 2 thereto on March 7, 2014, as

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Reality Shares Isolated Dividend Growth ETF. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[5] on the Exchange: Reality Shares Isolated Dividend Growth ETF (the ''Fund'').[6] The Shares of the Fund will be offered by the Reality Shares ETF Trust (formerly, the ERNY Financial ETF Trust) (the ''Trust''). The Trust will be registered with the Commission as an open-end management investment company.[7] Reality Shares Advisors, LLC (formerly, ERNY Financial Advisors, LLC) will serve as the investment adviser to the Fund (the ''Adviser''). ALPS Distributors, Inc. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (the ''Administrator,'' ''Transfer Agent'' or ''Custodian'') will serve as administrator, custodian and transfer agent for the Fund.[8]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition of and/or changes to such investment company portfolio. Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[9] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments

According to the Registration Statement, the Fund will seek to produce long term capital appreciation by attempting to isolate the value of dividends paid by a portfolio of U.S., European and Japanese large

[4] Amendment No. 1 was filed on March 6, 2014 and withdrawn on March 7, 2014.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission approved NYSE Arca Equities Rule 8.600 and has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing and trading of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF); 64643 (June 10, 2011) 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund); 69397 (April 18, 2013) 78 FR 24276 (April 24, 2013) (SR–NYSEArca–2013–18) (order approving listing and trading of fourteen actively-managed funds of the iShares Trust); 69591 (May 16, 2013) 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (order approving listing and trading of the International Bear ETF).

[7] The Trust will be registered under the 1940 Act. On November 12, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. Investment Company Act Release No. 30552 (June 10, 2013) (''Exemptive Order''). The Trust filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14146), on April 5, 2013, as amended on May 10, 2013 (together, the ''Exemptive Application''). Investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order.

[8] This Amendment No. 2 to SR–NYSEArca–2014–20 replaces SR–NYSEArca–2014–20 as originally filed and supersedes such filing in its entirety. The Exchange has withdrawn Amendment No. 1 to SR–NYSEArca–2014–20.

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

capitalization companies.[10] The Adviser considers U.S. large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the S&P 500 Index. The Adviser considers European large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the Euro Stoxx 50 Index. The Adviser considers Japanese large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the Nikkei 225 Index.

Under normal market conditions,[11] the Fund generally will invest substantially all its assets in any combination of investments whose collective performance is designed to reflect the growth of the level of dividends expected to be paid on a portfolio of securities issued by large capitalization companies listed for trading in the United States, Europe and Japan (as discussed in more detail below).[12]

The Fund may take long or short positions in the securities issued by large capitalization companies listed for trading in the U.S., Europe and Japan. A ''long'' position means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. A ''short position'' means to sell or be exposed to a security or instrument with the expectation that it will fall in value. To the extent permitted under the 1940 Act, the Fund may take long or short positions in shares of exchange traded funds (''ETFs'') that provide exposure to indexes of large-capitalization equity securities listed for trading in the U.S., Europe and Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, or any subset of such indexes (''Underlying ETFs'').[13] The strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on such security while minimizing its exposure to changes in the trading price of such security.

The Fund may buy and sell listed or over-the counter (''OTC'') options on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe and Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and the securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies.[14] A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund may invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid by the securities issued by large capitalization companies listed for trading in the United States, Europe and Japan, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may invest up to 80% of its assets through options transactions.

The Fund may invest in exchange-listed futures contracts and forward contracts based on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe or Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and the securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies. A listed futures contract is a standardized contract traded on a recognized exchange in which two parties agree to exchange either a specified financial asset or the cash equivalent of said asset at a specified future date and price. A forward contract involves the obligation to purchase or sell either a specified financial asset or the cash equivalent of said asset at a future date at a price set at the time of the contract. The Fund's use of listed futures contracts and forward contracts will be designed to allow the Fund to isolate its exposure to the growth of the level of the dividends expected to be paid on the securities of large capitalization U.S., European and Japanese companies, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund also may invest in Eurodollar futures contracts to manage or hedge exposure to interest rate fluctuations. The Fund may invest up to 80% of its assets through futures contracts and forward transactions.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe and Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies.[15] In a typical swap transaction, one party agrees to make periodic payments to another party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, the Fund receiving or paying only the net amount of the two payments. In a typical dividend swap transaction, the Fund

[10] The Fund's non-U.S. investments will be limited to listed securities traded in European and Japanese markets and futures contracts, forward contracts, options and swaps based on such securities. Not more than 10% of the assets of the Fund in the aggregate shall consist of non-U.S. equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[11] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[12] There is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing both of these risks.

[13] For purposes of this proposed rule change, Underlying ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts as described in NYSE Arca Equities Rule 8.100, and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Underlying ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse Underlying ETFs, it may not invest in leveraged or inverse leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[14] The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association (''ISDA'') agreement with the Fund.

[15] The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations. The Fund may invest up to 80% of its assets through swap transactions.[16]

The Fund's short positions and its investments in swaps, futures contracts, forward contracts and options will be backed by investments in U.S. Government Securities or other liquid assets in an amount equal to the Fund's maximum liability under the applicable position or contract. U.S. Government Securities include securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities.

The Fund will attempt to limit counterparty risk by entering into swap, forward and option contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.[17]

The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.[18]

Other Investments

In addition to the investments described above, the Fund may invest up to 20% of its net assets in high-quality, short-term debt securities and money market instruments.[19] Debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements [20] and bonds that are rated BBB or higher.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. Government securities.[21]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[22] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[23]

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[24]

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[25]

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce

[16] Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (''Cleared Swaps''). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

[17] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

[18] To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[19] The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[20] The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

[21] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[22] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[23] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[24] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[25] 26 U.S.C. 851 *et seq.*

leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[26] The Trust's Exemptive Order does not place any limit on the amount of derivatives in which the Fund can invest (other than adherence to the requirements of the 1940 Act and the rules thereunder).

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares only in Creation Units at the net asset value (''NAV'') next determined after receipt of an order on a continuous basis every business day. Creation Unit sizes are 25,000 Shares or more per Creation Unit. The Creation Unit size for the Fund may change.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation Unit and the ''Cash Component'' (defined below), computed as described below or (ii) the cash value of the Deposit Securities (''Deposit Cash'') and the Cash Component, computed as described below. Because non-exchange traded derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value (*i.e.,* Deposit Cash) when the Fund processes purchases of Creation Units in-kind. Specifically, the Fund will not accept OTC options, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions as Deposit Securities. When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (''NSCC''), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time) containing a list of the names and the required number of shares of each security in the Deposit Securities to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit is applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. In accordance with the Exemptive Order, the Fund reserves the right to accept a nonconforming Fund Deposit. In addition, the composition of the Deposit Securities may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by or through an ''Authorized Participant''. An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System (''Clearing Process'') of the NSCC or a participant in The Depository Trust Company (''DTC'') with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on the Exchange on each business day, the list of the names and quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''). In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities representing one or more Fund Securities.[27] Because non-exchange traded derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of OTC options, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions in lieu of in-kind securities. In accordance with the Exemptive Order, the Fund also reserves the right to distribute to the Authorized Participant non-conforming Fund Securities.

The right of redemption may be suspended or the date of payment postponed: (i) For any period during which the New York Stock Exchange (''NYSE'') is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order (''Order Cut-Off Time''). The Order Cut-Off Time for creation and redemption orders for the Fund is generally expected to be 4:00 p.m. Eastern Time. Orders for creation or redemption of Creation Units for cash generally must be submitted by 4:00 p.m. Eastern Time. A standard creation or redemption transaction fee (as

[26] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[27] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Detailed descriptions of the Fund's procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (which will be publicly available prior to the public offering of Shares), as applicable.

Determination of Net Asset Value

The Fund will calculate its NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the NYSE (normally, 4:00 p.m., Eastern Time) as described in its Registration Statement.

In calculating the Fund's NAV per Share, the Fund's investments will be valued in accordance with procedures approved by the Trust's Board of Trustees. These procedures, which may be changed by the Trust's Board of Trustees from time to time, generally require investments to be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, an independent pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. The Trust may use various independent pricing services, or discontinue the use of any independent pricing service, as determined by the Trust's Board of Trustees from time to time.

The Trust will generally value exchange-listed equity securities (which include common stocks and Underlying ETFs) and exchange-listed options on such securities at market closing prices. Market closing price is generally determined on the basis of last reported sales prices, or if no sales are reported, based on the last reported quotes. The Trust will generally value listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, such as forwards, OTC options and swap transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by an independent pricing service or major market makers or dealers. Investment company securities (other than Underlying ETFs) will be valued at NAV. Debt securities and money market instruments generally will be valued based on prices provided by independent pricing services, which may use valuation models or matrix pricing to determine current value. The Trust generally will use amortized cost to value debt securities and money market instruments that have a remaining maturity of 60 days or less.

In the event that current market valuations are not readily available or the Trust or Adviser believes such valuations do not reflect current market value, the Trust's procedures require that a security's fair value be determined.[28] In determining such value the Trust or the Adviser may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (*e.g.,* movement in interest rates, market indices, and prices from the Fund's index providers). In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Fund's Web site, *www.realityshares.com*, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[29] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio (as such term is defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.[30]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value [sic] securities and of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a portfolio composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The portfolio composition file will represent one Creation Unit of Shares of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value

[28] The Trust's Board of Trustees has established Fair Value Procedures, in accordance with the 1940 Act, governing the valuation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation of any portfolio investments.

[29] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[30] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

(''PIV'') as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[31] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including Underlying ETFs, futures and exchange-traded equities and options, will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities other than Underlying ETFs will be available from on-line information services and from the Web site for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[32] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [33] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35]

Not more than 10% of the assets of the Fund in the aggregate shall consist of non-U.S. equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'')

[31] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[32] *See* NYSE Arca Equities Rule 7.12.

[33] 17 CFR 240.10A–3.

[34] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[35] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [36] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the assets of the Fund in the aggregate shall consist of non-U.S. equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including Underlying ETFs, futures and exchange-traded equities and options, will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities other than Underlying ETFs will be available from on-line information services and from the Web site for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

[36] 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, equity securities, Underlying ETFs, and certain futures contracts and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the assets of the Fund in the aggregate shall consist of non-U.S. equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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 the 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–NYSEArca–2014–20 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–NYSEArca–2014–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–20 and should be submitted on or before April 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05752 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71690; File No. SR–MSRB–2014–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Changes to the MSRB's Electronic Municipal Market Access System, Real-Time Transaction Reporting System, and Short-Term Obligation Rate Transparency System

March 11, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as changing fees imposed by the MSRB under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The implementation date of the proposed rule change will be April 1, 2014. 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 MSRB is filing with the Commission a proposed rule change relating to the MSRB's Electronic Municipal Market Access system (''EMMA''), Real-time Transaction Reporting System (''RTRS''), and Short-Term Obligation Rate Transparency System (''SHORT System'') (the ''proposed rule change''). The proposed rule change consists of (i) fee increases for the MSRB's Real-Time Transaction Data Subscription Service, Comprehensive Transaction Data Subscription Service, and SHORT System subscription service; (ii) revisions to the EMMA, RTRS, and the SHORT System facilities language to clarify or otherwise provide that the MSRB may waive fees for these subscription services for non-profit organizations (including institutions of higher education) and for organizations providing, at no out-of-pocket charge to the MSRB, services or products to the MSRB for internal or public use or dissemination on EMMA on terms agreeable to the MSRB; (iii) revisions to the EMMA Continuing Disclosure Service facilities language to clarify that a Nationally Recognized Statistical Rating Organization (''NRSRO'') for which such service or product fees are waived could, nevertheless, be treated as having agreed to provide credit rating and related information to the MSRB on terms that qualify for the display of that information on EMMA; and (iv) revisions to the RTRS Historical Transaction Data Product facilities language to clarify that the purchase price of the product does not include sales tax, as required by Virginia state law, in order to harmonize the language for that product with the existing language of the EMMA, SHORT, and other RTRS facilities.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

RTRS is a facility for the collection and dissemination of information about transactions occurring in the municipal securities market. RTRS and its Real-Time Transaction Data Subscription Service provide a real-time stream of data representing municipal securities transaction reports made by brokers, dealers, and municipal securities dealers to RTRS for an annual subscription fee of $10,000.[4] The MSRB proposes to increase the annual subscription fee for the Real-Time Transaction Data Subscription Service from $10,000 to $11,000, effective April 1, 2014.

Another component of RTRS is the MSRB Comprehensive Transaction Data Subscription Service (the ''Comprehensive Service''), which consists of three trade reports: Transaction data one business day after the trade (T+1), transaction data five business days after the trade (T+5), and transaction data 20 business days after the trade (T+20). The MSRB proposes to increase the annual subscription fee for the Comprehensive Service from $5,000 to $5,500, effective April 1, 2014.

The SHORT System is a facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Currently, these securities consist of auction rate securities and variable-rate demand obligations. The MSRB makes the information and documents collected by the SHORT System available through a subscription service, which is available for an annual fee of $10,000.[5] The MSRB proposes to increase the annual subscription fee for the SHORT System subscription service from $10,000 to $11,000, effective April 1, 2014.

The MSRB has not increased the cost of either the Real-Time Transaction Data Subscription Service or the Comprehensive Service since January 2011, and has not increased the cost of the SHORT System subscription service since its inception in 2010. The SEC and Congress, as noted below, have recognized the need for the MSRB to charge commercially reasonable fees for automated subscription-based feeds. Currently, the Real-Time Transaction Data Subscription Service generates revenue of approximately $540,000 annually, the Comprehensive Service generates revenue of approximately $185,000 annually, and the SHORT System subscription service generates revenue of approximately $120,000 annually. The MSRB believes that incremental increases under the proposed rule change are commercially reasonable and notes that, even with the proposed increases, such fees would cover only a portion of the RTRS and SHORT System operating costs.

The MSRB proposes to revise the EMMA, RTRS, and the SHORT System facilities language to clarify, add to and harmonize the provisions pertaining to the waiver of fees for subscription services or products for non-profit organizations (including institutions of higher education) and for organizations providing, at no out-of-pocket charge to the MSRB, services or products to the MSRB for internal or public use or dissemination on EMMA on terms agreeable to the MSRB. Currently, the facilities language for most of the products and services provides that the MSRB can, in its discretion, waive certain fees for non-profit organizations, but the effectuating language is inconsistent across the facilities.

The MSRB believes that waivers of fees are potentially appropriate for non-profit organizations and organizations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 63340 (Nov. 18, 2010), 75 FR 72850 (Nov. 26, 2010), File No. SR–MSRB–2010–09.

[5] The SHORT System subscription service became effective September 30, 2010. *See* Securities Exchange Act Release No. 62993 (Sept. 24, 2010), 75 FR 60488 (Sept. 30, 2010), File No. SR–MSRB–2010–06.

that provide, at no out-of-pocket charge, services or products to the MSRB for its internal or public use or dissemination on EMMA. Non-profit organizations generally have a charitable or otherwise public purpose, and the MSRB likewise has a public purpose. In addition, the ability to waive fees can facilitate the MSRB's receipt of services or products at no out-of-pocket charge to be used by the MSRB to advance its public mission. This waiver ability is consistent with the policy already embodied in the existing facilities language on the MSRB's granting of waivers. The proposed rule change would clarify, add to and conform the facilities language consistent with this view. Further, the MSRB proposes an amendment to the EMMA Continuing Disclosure Service to clarify that an NRSRO can be treated, notwithstanding the MSRB providing access to such NRSRO to any of the MSRB's subscription products or services at either a reduced or no charge, as agreeing to provide credit rating and related information to the MSRB on terms that qualify for the display of that information on EMMA.

The MSRB also proposes to revise the RTRS Historical Transaction Data Product facilities language to include language pertaining to the purchase price in order to harmonize the RTRS Historical Transaction Data Product facility with the existing language of the EMMA, SHORT, and other RTRS facilities. Currently, the EMMA, SHORT, and other RTRS facilities provide that the purchase price of a product does not include sales tax, as required by Virginia state law, and that the purchase price is a one-time charge for each facility and will not include any future additions for enhancements that may be added to the data for each facility. The proposed rule change would add this provision to the RTRS Historical Transaction Data Product facility in conformity with the other analogous facilities.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Securities Exchange Act of 1934 (the ''Act''),[6] which requires, in pertinent part, that the Board's rules shall ''provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.'' The proposed rule change provides for reasonable fees to partially offset costs associated with operating and administering the Board, including operating RTRS and the SHORT System and producing and disseminating transaction reports to subscribers.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(3)(B)(ii) of the Act,[7] which provides that the MSRB ''shall not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under Section 19(b)'' of the Act.[8] Implicit within the authority to charge fees, is the ability to waive fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fee increases would apply equally to all market participants that choose to subscribe to the services (unless waived by the MSRB), and those who choose not to subscribe may view the same information for free on the EMMA web portal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2014–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2014–02 and should be submitted on or before April 7, 2014.

[6] 15 U.S.C. 78o–4(b)(2)(J).

[7] 15 U.S.C. 78o–4(b)(3)(B)(ii).

[8] *See* Securities Exchange Act Release No. 66866 (Apr. 26, 2012), 77 FR 26063 (May 2, 2012), File No. SR–MSRB–2012–02; Securities Exchange Act Release No. 66865 (Apr. 26, 2012), 77 FR 26061 (May 2, 2012), File No. SR–MSRB–2012–03.

For the Commission, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05754 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71689; File No. SR–NYSE–2014–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List To Modify the Current Adding Credit Tiers and Add a New Adding Credit Tier

March 11, 2014.

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 February 28, 2014, 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.

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 modify the current adding credit tiers and add a new adding credit tier. The proposed fees would be operative on March 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and 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 modify the current adding credit tiers and add a new adding credit tier. The proposed fees would be operative on March 1, 2014.

Under the current Tier 1 Adding Credit, the Exchange offers a credit of $0.0020 per share ($0.0010 if a Non-Displayed Reserve Order or $0.0015 if a Midpoint Passive Liquidity (''MPL'') order) for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if:

(i) The member organization has average daily trading volume (''ADV'') that adds liquidity to the NYSE during the billing month (''Adding ADV,'' which shall exclude any liquidity added by a Designated Market Maker (''DMM'')) that is at least 1.5% of consolidated average daily volume in NYSE-listed securities during the billing month (''NYSE CADV''), and executes market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders of at least 0.375% of NYSE CADV;

(ii) the member organization has Adding ADV that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as a Supplemental Liquidity Provider (''SLP'') for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit (''SLP-Prop'') and an SLP market maker (''SLMM'') of the same member organization) of more than 0.15% of NYSE CADV; or

(iii) the member organization has ADV that adds liquidity in customer electronic orders to the NYSE (''Customer Electronic Adding ADV,'' which shall exclude any liquidity added by a Floor broker, DMM, or SLP) during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization's Customer Electronic Adding ADV during September 2012 as a percentage of consolidated average daily volume in NYSE-listed securities during September 2012 plus 15%.

The Exchange proposes to modify the first method by which a member organization may qualify for the current Tier 1 Adding Credit. Specifically, a member organization would qualify for the credit of $0.0020 per share ($0.0010 if a Non-Displayed Reserve Order or $0.0015 if an MPL order) for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the member organization has Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV, and executes MOC and LOC orders of at least 0.375% of NYSE CADV. The Exchange does not propose to modify the second or third methods by which a member organization may qualify for the current Tier 1 Adding Credit.

The Exchange also proposes to establish a new adding credit tier, which would provide a credit of $0.0022 per share ($0.0010 if a Non-Displayed Reserve Order or $0.0015 if an MPL order) for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if:

(i) The member organization has Customer Electronic Adding ADV during the billing month that is at least 1.25% of NYSE CADV, and executes MOC and LOC orders of at least 0.12% of NYSE CADV; or

(ii) the member organization has Customer Electronic Adding ADV during the billing month that is at least 0.85% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and either (a) adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of more than 0.3% of NYSE CADV or (b) adds liquidity to the NYSE as a Floor broker of more than 0.3% of NYSE CADV.

The Exchange proposes to name the new adding credit tier the ''Tier 1 Adding Credit'' and would rename the current Tier 1 Adding Credit and Tier 2 Adding Credit, the ''Tier 2 Adding Credit'' and ''Tier 3 Adding Credit,'' respectively. The Exchange also proposes to make certain non-substantive, conforming changes to the Price List.[4]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that it has previously filed with the Securities and Exchange Commission a proposed rule change to amend the Price List (File No. SR–NYSE–2014–09). Exhibit 5 to SR–NYSE–2014–09 specified an effective date for the revised Price List of March 1, 2014 (changed from February 1, 2014). Exhibit 5 to the instant proposed rule change also specifies an effective date of March 1, 2014. SR–NYSE–2014–09 also modified the credit for executions of orders sent to the Floor broker for representation on the Exchange when adding

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[6] 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 that modifying the first method by which member organizations may qualify for the credit of $0.0020 per share under the current Tier 1 Adding Credit by basing the threshold on Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV is reasonable because it would encourage the submission of customer electronic orders that add liquidity to the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would encourage multiple sources of liquidity by providing member organizations that do not have a DMM, SLP, or Floor broker unit with an additional method to qualify for the credit. As is currently the case, member organizations would continue to have three distinct methods of qualifying for the $0.0020 per share credit.

The Exchange believes that the new Tier 1 Adding Credit of $0.0022 per share for transactions in stocks with a per share stock price of $1.00 or more when adding liquidity is reasonable because it would further contribute to incenting member organizations to provide additional amounts of liquidity on the Exchange. The Exchange believes that the proposed new Tier 1 Adding Credit of $0.0022 is equitable and not unfairly discriminatory because all member organizations would benefit from such increased levels of liquidity. In addition, the new Tier 1 Adding Credit would provide a higher credit to member organizations that is reasonably related to the value to the Exchange's market quality associated with higher volumes of liquidity. In addition, the Exchange believes that the proposed new Tier 1 Adding Credit is equitable and not unfairly discriminatory because it would provide several methods of qualifying for the credit, which would attract multiple sources of liquidity to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] 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 proposed changes to the adding credit tiers would not burden competition, but rather would encourage multiple sources of liquidity, including both member organizations with an SLP or Floor broker unit and those without. In addition, the proposed new Tier 1 Adding Credit would not burden competition; rather, it is designed to encourage member organizations to submit additional amounts of liquidity on the Exchange.

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 or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

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)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] 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)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–11. 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 Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–

liquidity to the Exchange. When updating the Price List, the Exchange will include the fee changes described in both this filing and the fee changes reflected in SR–NYSE–2014–09, which are reflected in the Exhibit 5 to this proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

2014–11 and should be submitted on or before April 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05753 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71685; File No. SR–ISE–2014–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Market Makers To Enter Opening Only Orders in Appointed Options Classes

March 11, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 25, 2014 the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Rule 805(a) to permit market makers to enter Opening Only Orders in the options classes to which they are appointed. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 805(a) to permit market makers to enter Opening Only Orders in the options classes to which they are appointed. On October 7, 2010 the Exchange filed an immediately effective rule change that, among other things, established two new order types, including the ''Opening Only Order,'' which is a limit order that can be entered for the opening rotation only.[3] When the ISE adopted this new order type, however, it did not add it to the list of order types in Rule 805(a) that market makers are permitted to trade in their appointed classes.[4] Because of this, market makers are not currently permitted to submit Opening Only Orders in the options classes to which they are appointed. Prior to the launch of the ISE's T7 trading system (formerly ''Optimise''), which introduced Opening Only Orders, market makers could submit immediate-or-cancel (''IOC'') orders prior to the opening of trading, which provided the same functionality as ISE's current Opening Only Orders. Specifically, like Opening Only Orders, the ISE permitted members to submit IOC orders at any time prior to the opening of trading, which would then execute during the opening rotation, with any unexecuted portion being cancelled. Under the T7 trading system, however, IOC orders are only permitted intraday. The Exchange now proposes to amend its rules so that market makers are able to use this functionality again by submitting Opening Only Orders to the ISE. Market makers on other options exchanges, such as the MIAX Options Exchange (''MIAX''), similarly have the ability to enter ''opening only'' order types in their appointed classes.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing market makers to use Opening Only Orders will give those members greater flexibility to update prices during the opening rotation. Specifically, market makers have requested that they be permitted to use Opening Only Orders so that they may use this order type to update their prices in single series during the opening process more efficiently than relying on quoting systems that are designed to update prices across multiple series. As explained above, ''opening only'' orders types are available to market makers on other exchanges, and this functionality was previously available to ISE market makers prior to the introduction of the T7 trading system as members, including market makers, were able to submit IOC orders for execution in the opening rotation. Moreover, because any portion of an Opening Only Order that is not executed during the opening rotation is cancelled, this proposed rule change is generally consistent with Rule 805(a), which was intended to prevent market makers from having both standing limit orders and quotes in the same options class.

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 intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive as it permits market makers to use functionality already available to other ISE members, and to market makers on other exchanges, who are currently able to submit Opening Only Orders or other similar order types.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63117 (October 15, 2010), 75 FR 65042 (October 21, 2010) (SR–ISE–2010–101). An ''Opening Only Order'' is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled.

[4] Market makers are currently permitted to submit the following order types in their appointed options classes: IOC orders, market orders, fill-or-kill orders, complex orders, and certain block orders and non-displayed penny orders. *See* ISE Rule 805(a).

[5] *See* MIAX Rule 605(a).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the proposal will allow market makers, during the opening process, to use an order type that more efficiently update their prices. The Exchange also stated that Opening Only Orders are presently available to other ISE members and to market makers on competing options exchanges. The Commission believes that the proposed rule change presents no novel issues. Moreover, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because it allows the market makers to more efficiently, and thereby more readily, display updated prices to the public. Therefore, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing.[13]

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–ISE–2014–11 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–ISE–2014–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2014–11 and should be submitted on or before April 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05751 Filed 3–14–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8660]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of the Study Group on Choice of Law in International Commercial Contracts

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on Choice of Law in International Commercial Contracts. This is not a meeting of the full Advisory Committee.

A working group of experts from various countries was established by the Hague Conference on Private International Law to develop non-binding principles relevant to the choice of law in international commercial contracts. The draft principles prepared by that group were considered at a Special Commission of the Hague Conference held November 12–16, 2012. Subsequently the working group of experts prepared a detailed draft commentary to accompany the draft principles.

In April, the Hague General Affairs Council is expected to either give its final endorsement of the complete package of the Principles and the Commentary, or it may submit the package to the Special Commission.

The Draft Hague Principles as approved by the November 2012 Special Commission meeting on choice of law in international contracts, and the draft commentary can be found at the

following link: *http://www.hcch.net/upload/wop/gap2014pd06_en.pdf.*

The purpose of this public meeting is to obtain the views of concerned stakeholders in advance of the Council meeting in April.

Time and Place: The meeting of the ACPIL Study Group will take place on March 20, 2014 from 10:30 a.m. to 1:30 p.m. EDT at 2430 E Street NW., South Building (SA 4) (Navy Hill), Room 356. Participants should arrive at the Navy Hill gate at the corner of 23rd Street NW. and D Street NW. before 10:00 a.m. for visitor screening. Participants will be met at the Navy Hill gate at 23rd and D Streets NW., and will be escorted to the South Building. Persons arriving later will need to make arrangements for entry using the contact information provided below. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to Navy Hill is strictly controlled. For pre-clearance purposes, those planning to attend in person are requested to email at *PIL@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, affiliation, and email address. This will greatly facilitate entry.

A member of the public needing reasonable accommodation should provide an email requesting such accommodation to *pil@state.gov* as soon as possible. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

The Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. For further information please contact Tricia Smeltzer at *smeltzertk@state.gov* or 202–776–8423. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: March 6, 2014.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2014–05831 Filed 3–14–14; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agreement on Government Procurement: Effective Date of Amendments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: For the purpose of U.S. Government procurement that is covered by Title III of the Trade Agreements Act of 1979, the effective date of the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012, World Trade Organization (WTO), is April 6, 2014, for the following Parties to the 1994 WTO Agreement on Government Procurement: Canada, Chinese Taipei, Hong Kong, Israel, Lichtenstein, Norway, European Union, Iceland, and Singapore.

DATES: *Effective Date:* April 6, 2014.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Scott Pietan ((202) 395–9646), Director of International Procurement Policy, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Executive Order 12260 (December 31, 1980) implements the 1979 and 1994 Agreement on Government Procurement, pursuant to Title III of the Trade Agreements Act of 1979 as amended (19 U.S.C. 2511–2518). In section 1–201 of Executive Order 12260, the President delegated to the United States Trade Representative the functions vested in the President by sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516).

The Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012 (''Protocol''), will enter into force for those Parties to the WTO Agreement on Government Procurement (''Parties''), done at Marrakesh on 15 April 1994 (''1994 Agreement''), that have deposited their respective instruments of acceptance of the Protocol on the 30th day following the deposit by two-thirds (ten) of the Parties to the 1994 Agreement. Thereafter, the Protocol will enter into force for each Party to the 1994 Agreement which has deposited its instrument of acceptance, on the 30th day following the date of such deposit. The United States deposited its instrument of acceptance of the Protocol on December 2, 2013. On March 7, 2014, the tenth Party, Israel, deposited its instrument of acceptance to the Protocol. Therefore, the Protocol shall enter into force on April 6, 2014 for the United States and the following Parties: Canada, Chinese Taipei, Hong Kong, Israel, Lichtenstein, Norway, European Union, Iceland, and Singapore.

Pursuant to the Decision of the Committee on Government Procurement on Adoption of the Text of ''The Protocol Amending the Agreement on Government Procurement'', the 1994 Agreement shall continue to apply as between a Party to the 1994 Agreement which is also a Party to the Protocol and a Party only to the 1994 Agreement. Therefore, effective April 6, 2014 and with respect to those Parties for which the Protocol has entered into force, all references in Title III of the Trade Agreement Act of 1979 and in Executive Order 12260 to the Agreement on Government Procurement shall refer to the 1994 Agreement as amended by the Protocol.

With respect to those Parties which have not deposited their instruments of acceptance, all references in Title III of the Trade Agreement Act of 1979 and in Executive Order 12260 to the Agreement on Government Procurement shall continue to refer to the 1994 Agreement until 30 days following the deposit by such Party of its instrument of acceptance of the Protocol.

For the full text of the Government Procurement Agreement as amended by the Protocol and the new annexes that set out the procurement covered by all of the Government Procurement Agreement Parties, see GPA–113: *http://www.ustr.gov/sites/default/files/GPA%20113%20Decision%20on%20the%20outcomes%20of%20the%20negotiations%20under%20Article%20XXIV%207.pdf.*

Michael B.G. Froman,

United States Trade Representative.

[FR Doc. 2014–05719 Filed 3–14–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–22]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 7, 2014.

ADDRESSES: You may send comments identified by docket number FAA–2013–1095 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, phone 425–306–7134, email *mark.forseth@faa.gov;* or Sandra Long, ARM–201, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, phone (202) 493–5245, email *sandra.long@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 11, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–1095.

Petitioner: Embraer.

Section of 14 CFR Affected: § 25.981(a)(3).

Description of Relief Sought: The petitioner requests relief from fuel tank systems lightning protection requirement for three independent layers of protection on its Embraer Model EMB–550 airplanes.

[FR Doc. 2014–05721 Filed 3–14–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and U.S. Army Corps of Engineers (USACE).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and U.S. Army Corps of Engineers (USACE) that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Interstate 80/Interstate 680/State Route 12 Interchange Project. The project is located in the vicinity of the city of Fairfield in Solano County, California along 13 miles of highway on I–80, I–680 and State Route 12 (Post Miles SOL–80 (PM 10.8/17.0); SOL–680 (PM 10.0/13.1); SOL–SR 12 (PM 1.7/L2.8); and SOL–SR 12 (PM L1.8/4.8). Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C.139 (*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 14, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Valerie Shearer, District Branch Chief, Caltrans District 4 Office of Environmental Analysis, 111 Grand Avenue, P.O. Box 23660, Oakland, CA 94623–0660, 8:00 a.m.–5:00 p.m., Pacific Standard Time, Telephone (510) 286–5594, email *valerie_shearer@dot.ca.gov*. The U.S. Army Corps of Engineers (USACE), Attn: Ms. Jane Hicks, Regulatory Division, U.S. Army Corps of Engineers, 1455 Market Street, 16th Floor, San Francisco, California 94103–1398 8:00 a.m.–5:00 p.m. Pacific Standard Time.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, and U.S. Army Corps of Engineers (USACE) has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the Interstate 80/Interstate 680/State Route 12 Interchange Project. The proposed project involves improvements on an approximately 6.2-mile-long segment of I–80 between Red Top Road and Abernathy Road, an approximately 3.1-mile-long segment of I–680 between Gold Hill Road and I–80, a 1.1-mile-long segment of SR 12 West (SR 12W) between 0.5 mile west of Red Top Road and I–80, and an approximately 3.0-mile-long segment of SR 12 East (SR 12E) between I–80 and Main Street in Suisun City. Within the limits of the project area, I–80 is a six to ten lane freeway. SR 12E is a divided four-lane highway, I–680 is a four-lane freeway, and SR 12W is an undivided two-lane highway. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on October 12, 2012, in the

Record of Decision (ROD) issued on December 07, 2012 and in other documents in project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm.* The U.S. Army Corps of Engineers (USACE) decision and permit SPN–2007–400401S are available by contacting USACE at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Vincent P. Mammano,

Division Administrator, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–05764 Filed 3–14–14; 8:45 am]

BILLING CODE 4910–RY–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 51 March 17, 2014

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore New Jersey, May to August 2014; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD141

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore New Jersey, May to August 2014

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont Doherty Earth Observatory (Observatory) in collaboration with the National Science Foundation (Foundation), for an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment incidental to conducting a marine geophysical (seismic) survey in the northwest Atlantic Ocean off the New Jersey coast June through July, 2014. The proposed dates for this action would be May 29, 2014 through August 17, 2014 to account for minor deviations due to logistics and weather. Per the Marine Mammal Protection Act, we are requesting comments on our proposal to issue an Authorization to the Observatory to incidentally take, by Level B harassment only, 26 species of marine mammals during the specified activity.

DATES: NMFS must receive comments and information on or before April 16, 2014.

ADDRESSES: Address comments on the application to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov*. Please include 0648–XD141 in the subject line. Comments sent via email to *ITP.Cody@noaa.gov,* including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application containing a list of the references used in this document, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The Foundation has prepared a draft Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. The EA titled ''Draft Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. *Langseth* in the Atlantic Ocean off New Jersey, June–July 2014,'' prepared by LGL, Ltd. environmental research associates, on behalf of the Foundation and the Observatory is available at the same internet address. Information in the Observatory's application, the Foundation's EA, and this notice collectively provide the environmental information related to proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. 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, 2013, NMFS received an application from the Observatory requesting that we issue an Authorization for the take of marine mammals, incidental to conducting a seismic survey in the northwest Atlantic Ocean June through July, 2014. NMFS determined the application complete and adequate on February 3, 2014.

The Observatory proposes to conduct a high-energy, 3-dimensional (3–D) seismic survey on the R/V *Langseth* in the northwest Atlantic Ocean approximately 25 to 85 kilometers (km) (15.5 to 52.8 miles (mi)) off the New Jersey coast for approximately 32 days from June 3 to July 9, 2014. The following specific aspect of the proposed activity has the potential to take marine mammals: increased underwater sound generated during the operation of the seismic airgun arrays. Thus, we anticipate that take, by Level B harassment only, of 26 species of marine mammals could result from the specified activity.

Description of the Specified Activity

Overview

The Observatory plans to use one source vessel, the R/V Marcus *G.* Langseth (*Langseth*), two pairs of seismic airgun subarrays configured with four or eight airguns as the energy source and four hydrophone streamers to conduct the conventional seismic survey. In addition to the operations of the airguns, the Observatory intends to

operate a multibeam echosounder, a sub-bottom profiler, and acoustic Doppler current profiler on the *Langseth* continuously throughout the proposed survey.

The purpose of the survey is to collect and analyze data on the arrangement of sediments deposited during times of changing global sea level from roughly 60 million years ago to present. The 3–D survey would investigate features such as river valleys cut into coastal plain sediments now buried under a kilometer of younger sediment and flooded by today's ocean.

Dates and Duration

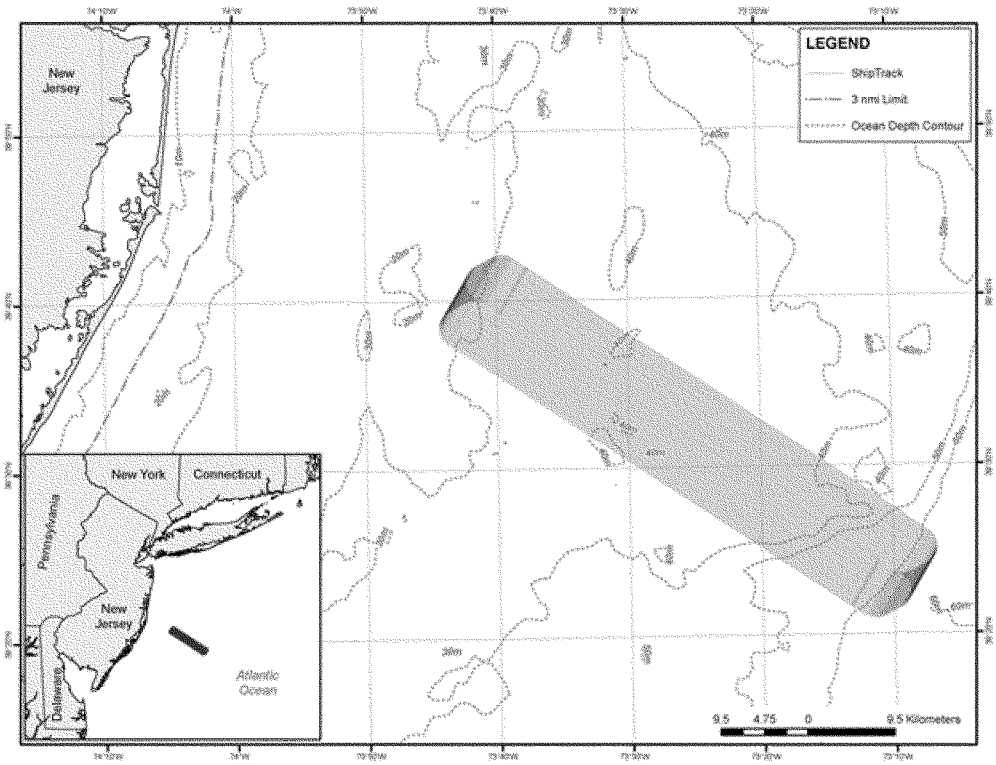
The Observatory proposes to conduct the seismic survey from the period of June 3 through July 9, 2014. The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) would include approximately 720 hours of airgun operations (i.e., 30 days over 24 hours). Some minor deviation from the Observatory's requested dates of June through August, 2014, is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Thus, the proposed Authorization, if issued, would be effective from May 29, 2014 through August 17, 2014.

We refer the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

Specified Geographic Region

The Observatory proposes to conduct the seismic survey in the Atlantic Ocean, approximately 25 to 85 km (15.5 to 52.8 mi) off the coast of New Jersey between approximately 39.3–39.7° N and approximately 73.2–73.8° W (see Figure 1). Water depths in the survey area are approximately 30 to 75 m (98.4 to 246 feet (ft)). They would conduct the proposed survey outside of New Jersey state waters and within the U.S. Exclusive Economic Zone.

Figure 1. Proposed location of the seismic survey in the Atlantic Ocean off the coast of New Jersey during June through July 2014.



Detailed Description of Activities

Transit Activities

The *Langseth* would depart from Newark, NJ, on June 3, 2014, and transit for eight hours to the proposed survey area. Setup, deployment, and streamer ballasting would occur over approximately three days. At the conclusion of the 30-day survey, the *Langseth* would take approximately one day to retrieve gear. At the conclusion of the proposed survey activities, the *Langseth* would return to Newark, NJ on July 9, 2014.

Vessel Specifications

The survey would involve one source vessel, the R/V *Langseth* and one chase vessel. The *Langseth,* owned by the Foundation and operated by the Observatory, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. It has two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is off during seismic acquisition.

The vessel's speed during seismic operations would be approximately 4.5 knots (kt) (8.3 km/hour (hr); 5.1 miles per hour (mph)). The vessel's cruising speed outside of seismic operations is approximately 10 kt (18.5 km/hr; 11.5 mph). While the *Langseth* tows the airgun array and the hydrophone streamer, its turning rate is limited to

five degrees per minute. Thus, the *Langseth's* maneuverability is limited during operations while it tows the streamer.

The vessel also has an observation tower from which protected species visual observers (observer) will watch for marine mammals before and during the proposed seismic acquisition operations. When stationed on the observation platform, the observer's eye level will be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

The chase vessel would be a multi-purpose offshore utility vessel similar to the *Northstar Commander,* which is 28 m (91.9 ft) long with a beam of 8 m (26.2 ft) and a draft of 2.6 m (8.5 ft). The chase vessel has twin 450-hp screws (Volvo D125–E).

Data Acquisition Activities

The proposed survey would cover approximately 4,900 km (3,045 mi) of transect lines within a 12 by 50 km (7.5 by 31 mi) area. Each transect line would have a spacing interval of 150 m (492 ft) in two 6-m (19.7-ft) wide race-track patterns.

During the survey, the *Langseth* would deploy two pairs of subarrays of four or eight airguns as an energy source. The subarrays would fire alternately, with a total volume of either approximately 700 cubic inches (in^3) or 1,400 in^3. The receiving system would consist of four 3,000-m (1.9-mi) hydrophone streamers with a spacing interval of 75 m (246 ft) between each streamer. As the *Langseth* tows the airgun subarrays along the survey lines, the hydrophone streamers would receive the returning acoustic signals and transfer the data to the on-board processing system.

Seismic Airguns

The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 220 in^3, with a firing pressure of 1,950 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz).

During the survey, the Observatory plans to use either a subarray with four airguns in one string or a subarray with a total of eight airguns in two strings on the vessel's port (left) side. The vessel's starboard (right) side would have an identical subarray configuration of either four airguns in one string or eight airguns in two strings to form the second source. The *Langseth* would operate the port and starboard sources in a ''flip-flop'' mode, firing alternately as it progresses along the track. In this configuration, the source volume would not exceed 700 in^3 (i.e., the four-string subarray) or 1,400 in^3 (i.e., the eight-string subarray) at any time during acquisition (see Figure A1, page 57 in the Foundation's 2014 EA). The *Langseth* would tow each subarray at a depth of either 4.5 or 6 m (14.8 or 19.7 ft) resulting in a shot interval of approximately 5.4 seconds (12.5 m; 41 ft). During acquisition the airguns will emit a brief (approximately 0.1 s) pulse of sound. During the intervening periods of operations, the airguns are silent.

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and there is also a reduction in the amount of sound transmitted in the near horizontal direction. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun subarrays on the *Langseth* range from 246 to 253 decibels (dB) re: 1 μPa (peak to peak). (We express sound pressure level as the ratio of a measured sound pressure and a reference pressure level. The commonly used unit for sound pressure is dB and the commonly used reference pressure level in underwater acoustics is 1 microPascal (μPa)). Briefly, the effective source levels for horizontal propagation are lower than source levels for downward propagation. We refer the reader to the Observatory's Authorization application and the Foundation's EA for additional information on downward and horizontal sound propagation related to the airgun's source levels.

Additional Acoustic Data Acquisition Systems

Multibeam Echosounder: The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13.0 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

Each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (in water less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-bottom Profiler: The *Langseth* will also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5 kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 μPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

Acoustic Doppler Current Profiler: The Observatory would measure currents using a Teledyne OS75 75-kilohertz (kHz) Acoustic Doppler current profiler (ADCP). The ADCP's configuration consists of a 4-beam phased array with a beam angle of 30°. The source level is proprietary information but has a maximum acoustic source level of 224 dB.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 in this notice provides the following: All marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); abundance; occurrence and seasonality in the activity area.

The Observatory presented species information in Table 2 of their application but excluded information on pinnipeds because they anticipated that these species would have a more northerly distribution during the summer and thus have a low likelihood of occurring in the survey area. Based on the best available information, NMFS expects that certain pinniped species have the potential to occur within the survey area and have included

additional information for these species in Table 1 of this notice.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN MAY THROUGH AUGUST, 2014

Species	Stock name	Regulatory status [1 2]	Stock/ species abundance [3]	Occurrence and range	Season
North Atlantic right whale (*Eubalaena glacialis*).	Western Atlantic	MMPA–D ESA–EN	444	common coastal/ shelf.	year-round.[4]
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	MMPA–D ESA–EN	823	common coastal	spring–fall.
Common minke whale (*Balaenoptera acutorostrata*).	Canadian East Coast.	MMPA–D ESA–NL	20,741	rare coastal/shelf	spring–summer.
Sei whale (*Balaenoptera borealis*)	Nova Scotia	MMPA–D ESA–EN	357	uncommon shelf edge.	spring.
Fin whale (*Balaenoptera physalus*)	Western North Atlantic.	MMPA–D ESA–EN	3,522	common pelagic	year-round.
Blue whale (*Balaenoptera musculus).*	Western North Atlantic.	MMPA–D ESA–EN	440	uncommon coastal/pelagic.	occasional.
Sperm whale (*Physeter macrocephalus*).	Nova Scotia	MMPA–D ESA–EN	1,593	common pelagic	year-round.
Dwarf sperm whale (*Kogia sima*)	Western North Atlantic.	MMPA–NC ESA–NL	1,042	uncommon shelf	year-round.
Pygmy sperm whale (*K. breviceps*)	Western North Atlantic.	MMPA–NC ESA–NL	741	uncommon shelf	year-round.
Blainville's beaked whale (*Mesoplodon densirostris*).	Western North Atlantic.	MMPA–NC ESA–NL	7,948 [5]	uncommon shelf/ pelagic.	spring–summer.
Cuvier's beaked whale (*Ziphius cavirostris*).	Western North Atlantic.	MMPA–NC ESA–NL	4,962	uncommon shelf/ pelagic.	spring–summer.
Gervais' beaked whale (*M. europaeus*).	Western North Atlantic.	MMPA–NC ESA–NL	1,847	uncommon shelf/ pelagic.	spring–summer.
Sowerby's beaked whale (*M. bidens*).	Western North Atlantic.	MMPA–NC ESA–NL	3,653	uncommon shelf/ pelagic.	spring–summer.
True's beaked whale (*M. mirus*)	Western North Atlantic.	MMPA–NC ESA–NL	7,948 [5]	uncommon shelf/ pelagic.	spring–summer.
Northern bottlenose whale (*Hyperoodon ampullatus*).	Western North Atlantic.	MMPA–NC ESA–NL	unknown	rare pelagic	unknown.
Rough-toothed dolphin (*Steno bredanensis*).	Western North Atlantic.	MMPA–NC ESA–NL	274	rare pelagic	summer.
Bottlenose dolphin (*Tursiops truncates*).	Western North Atlantic Offshore.	MMPA–NC ESA–NL	81,588	common pelagic	spring–summer.
	Western North Atlantic Northern Migratory Coastal.	MMPA–D ESA–NL	9,604	common coastal	summer.
Pantropical spotted dolphin (*Stenella attenuate*).	Western North Atlantic.	MMPA–NC ESA–NL	4,439	rare pelagic	summer–fall.
Atlantic spotted dolphin (*S. frontalis*).	Western North Atlantic.	MMPA–NC ESA–NL	26,798	common coastal	summer–fall.
Spinner dolphin (*S. longirostris*)	Western North Atlantic.	MMPA–NC ESA–NL	unknown	rare pelagic	unknown.
Striped dolphin (*S. coeruleoalba*)	Western North Atlantic.	MMPA–NC ESA–NL	46,882	uncommon shelf	summer.
Short-beaked common dolphin (*Delphinus delphis*).	Western North Atlantic.	MMPA–NC ESA–NL	67,191	common shelf/ pelagic.	summer–fall.
White-beaked dolphin (*Lagenorhynchus albirostris*).	Western North Atlantic.	MMPA–NC ESA–NL	2,003	rare coastal/shelf	summer.
Atlantic white-sided-dolphin (*L. acutus*).	Western North Atlantic.	MMPA–NC ESA–NL	48,819	uncommon shelf/ slope.	summer–winter.
Risso's dolphin (*Grampus griseus*)	Western North Atlantic.	MMPA–NC ESA–NL	15,197	common shelf/ slope.	year-round.
False killer whale (Pseudorca crassidens).	Northern Gulf of Mexico.	MMPA–NC ESA–NL	777	rare pelagic	spring–summer.
Pygmy killer whale (*Feresa attenuate*).	Western North Atlantic.	MMPA–NC ESA–NL	unknown	rare pelagic	unknown.
Killer whale (*Orcinus orca*)	Western North Atlantic.	MMPA–NC ESA–NL	unknown	rare pelagic	unknown.
Long-finned pilot whale (*Globicephala melas*).	Western North Atlantic.	MMPA–NC ESA–NL	12,619	uncommon shelf/ pelagic.	summer.
Short-finned pilot whale (*G. macrorhynchus*).	Western North Atlantic.	MMPA–NC ESA–NL	24,674	uncommon shelf/ pelagic.	summer.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN MAY THROUGH AUGUST, 2014—Continued

Species	Stock name	Regulatory status [1] [2]	Stock/ species abundance [3]	Occurrence and range	Season
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/ Bay of Fundy.	MMPA–NC ESA–NL	79,833	common coastal	year-round.
Gray seal (*Halichoerus grypus*)	Western North Atlantic.	MMPA–NC ESA–NL	348,999 [6]	common coastal	fall–spring.
Harbor seal (*Phoca vitulina*)	Western North Atlantic.	MMPA–NC ESA–NL	99,340 [7]	common coastal	fall–spring.
Harp seal (*Pagophilus groenlandicus*).	Western North Atlantic.	MMPA–NC ESA–NL	8,600,000	rare pack ice	Jan–May.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2012 NMFS Stock Assessment Report (Waring et al., 2013) unless otherwise noted.
[4] Seasonality based on Whitt et al., 2013.
[5] Undifferentiated beaked whales abundance estimate (Waring et al., 2013).
[6] Canadian population estimate (Waring et al., 2013).
[7] 2001 survey estimate (Waring et al., 2013).

NMFS refers the public to the Observatory's application, the Foundation's EA (see **ADDRESSES**), and the 2012 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm* for further information on the biology and local distribution of these species.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operations, vessel movement) impact marine mammals (via observations or scientific studies). This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies of animals exhibiting no reaction to sound or exhibiting barely perceptible avoidance behaviors). This discussion may also include reactions that NMFS considers to rise to the level of a take.

NMFS intends to provide a background of potential effects of the Observatory's activities in this section. This section does not consider the specific manner in which the Observatory would carry out the proposed activity, what mitigation measures the Observatory would implement, and how either of those would shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect the Observatory to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity would impact marine mammals. NMFS will consider the content of the following sections: (1) Estimated Take by Incidental Harassment; (3) Proposed Mitigation; and (4) Anticipated Effects on Marine Mammal Habitat, to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated ''functional hearing groups'' for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

The functional groups applicable to this proposed survey and the associated frequencies are:

- Low frequency cetaceans (13 species of mysticetes): Functional hearing estimates occur between approximately 7 Hertz (Hz) and 30 kHz (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing estimates occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of *cephalorhynchids*): Functional hearing estimates occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Phocid (true seals) functional hearing estimates occur between approximately 75 Hz and 100 kHz (Hemila *et al.,* 2006; Mulsow *et al.,* 2011; Reichmuth *et al.,* 2013) and otariid (seals and sea lions) functional hearing estimates occur between approximately 100 Hz to 40 kHz.

As mentioned previously in this document, 26 marine mammal species (6 mysticetes, 17 odontocetes, and 3 pinnipeds) would likely occur in the proposed action area. Table 2 presents the classification of these 26 species into their respective functional hearing group. We consider a species' functional hearing group when we analyze the effects of exposure to sound on marine mammals.

TABLE 2—CLASSIFICATION OF MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED ACTIVITY AREA IN MAY THROUGH AUGUST, 2014 BY FUNCTIONAL HEARING GROUP

[Southall et. al., 2007]

Low Frequency Hearing Range.	North Atlantic right, humpback, common minke, sei, fin, and blue whale
Mid-Frequency Hearing Range.	Sperm whale, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, Sowerby's beaked whale, True's beaked whale, northern bottlenose whale, false killer whale, pygmy killer whale, killer whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, spinner dolphin, striped dolphin, short-beaked common dolphin, white-beaked dolphin, Atlantic white-sided-dolphin, Risso's dolphin, long-finned pilot whale, short-finned pilot whale
High Frequency Hearing Range.	Dwarf sperm whale, pygmy sperm whale, harbor porpoise
Pinnipeds in Water Hearing Range.	Gray seal, harbor seal, harp seal

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have also shown that marine mammals at distances of more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.* 2005, 2006) and (MacLean and Koski, 2005; Bain and Williams, 2006 for Dall's porpoises).

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir (2008) recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hour) for humpback and sperm whales according to the airgun array's operational status (i.e., active versus silent).

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

For the airgun sound generated from the proposed seismic survey, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Generally, the asking effects of the intermittent seismic pulses near the sound source should be minor due to the brief duration of these pulses and relatively long silent periods between air gun shots (approximately 12 seconds). However, at longer distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.,* 2006), although the intensity of the sound is greatly reduced.

We expect that the masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds will be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. NMFS understands that some baleen and toothed whales continue calling in the presence of seismic pulses, and that some researchers have heard these calls between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, 2005b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area.

Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies have found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Several studies have reported hearing dolphins and porpoises calling while airguns were operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example in one study, blue whales increased call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000).

Additionally, beluga whales change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.,* 1985; Lesage *et al.,* 1999; Scheifele *et al.,* 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are present in the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994).

Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004; Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2010; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Studies have noted directional hearing at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). 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).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that could potentially be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. There are less detailed data available for some other species of baleen whales and small toothed whales, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away from the area. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.,* 1995). They avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km (2.5 to 9.3 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in the Foundation's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (p-p). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa. However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). However, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales to seismic surveys. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, 2007b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by

airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009 and reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2011). The western Pacific gray whale (*Eschrichtius robustus*) population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2011). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—There is little systematic information available about reactions of toothed whales to noise pulses. There are few studies on toothed whales similar to the more extensive baleen whale/seismic pulse work summarized earlier in this notice. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008, Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins and beluga whales (*Delphinapterus leucas)* exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales (*Ziphius*

cavirostris) may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998).

Hearing Impairment

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

Researchers have studied temporary threshold shift in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of temporary threshold shift let alone permanent hearing damage, (i.e., permanent threshold shift, in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is complete recovery), can occur in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of the seismic survey, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

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 (similar to those discussed in auditory masking, below). 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. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic survey in Cook Inlet. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Non-auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, the pituitary hormones regulate virtually all neuroendocrine functions affected by stress—including immune competence, reproduction, metabolism, and behavior. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that are quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. 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 biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (e.g., elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological

and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. However, as stated previously in this document, the source levels of the drillships are not loud enough to induce PTS or likely even TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed seismic survey area.

In general, there are few data about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. Therefore, it is unlikely that such effects would occur during the Observatory's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance''.

Marine mammals 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. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

The Observatory would operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During the Observatory's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The

following section outlines possible effects of an echosounder on marine mammals.

Masking—Marine mammal communications would not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those emitted by the Observatory's echosounder, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the echosounder proposed for use by the *Langseth* is quite different than sonar used for navy operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

Based upon the best available science, we believe that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the echosounder is not likely to result in the harassment of marine mammals.

Sub-Bottom Profiler

The Observatory would also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause temporary threshold shift.

Masking—Marine mammal communications would not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the profiler are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals would move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below this section.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary

displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the *Langseth* would be audible to marine mammals over a large distance, it is unlikely that animals would respond behaviorally (in a manner that we would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, we do not expect the *Langseth's* movements to result in Level B harassment.

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts).

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 8.0 km (4.9 mi) of equipment and cables. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of entanglement due to slow speed of the survey vessel and onboard monitoring efforts. The Observatory has no recorded cases of entanglement of marine mammals during the conduct of over 8 years of seismic surveys covering over 160,934 km (86,897.4 nmi) of transect lines.

In May, 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the *Langseth's* barovanes after the conclusion of a seismic survey off Costa Rica (LGL, 2011).

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. This section describes the potential impacts to marine mammal habitat from the specified activity.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent

changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

There are few data about the mechanisms and characteristics of damage impacting fish that by exposure to seismic survey sounds. Peer-reviewed scientific literature has presented few data on this subject. NMFS is aware of only two papers with proper experimental methods, controls, and careful pathological investigation that implicate sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (i.e., the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

The National Park Service conducted an experiment of the effects of a single 700 in^3 airgun in Lake Meade, Nevada (USGS, 1999) to understand the effects of a marine reflection survey of the Lake Meade fault system (Paulson *et al.,* 1993, in USGS, 1999). The researchers suspended the airgun 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates, hired by USGS to monitor the effects of the surveys, concluded that airgun operations were not responsible for the death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,*

2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet, Alaska. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. The Minerals Management Service noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary and also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Moriyasu *et al.* (2004) and Payne *et al.* (2008) provide literature reviews of the effects of seismic and other underwater sound on invertebrates. The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of the 2011 PEIS (NSF/USGS, 2011).

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 ± 5 dB re: 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Studies have noted primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans occurring several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The authors noted that crustaceans exhibited no behavioral impacts (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for

fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, the authors observed no behavioral impacts (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) 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 taking for certain subsistence uses (where relevant).

The Observatory has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Protocols used during previous Foundation and Observatory-funded seismic research cruises as approved by us and detailed in the Foundation's 2011 PEIS and 2013 EA;

(2) Previous incidental harassment authorizations applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the Observatory, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;
(2) Proposed exclusion zones;
(3) Power down procedures;
(4) Shutdown procedures;
(5) Ramp-up procedures; and
(6) Speed and course alterations.

Vessel-Based Visual Mitigation Monitoring

The Observatory would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (i.e., greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated 180-dB or 190-dB exclusion zone.

During seismic operations, at least four protected species observers would be aboard the *Langseth.* The Observatory would appoint the observers with our concurrence and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, the Observatory would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

When the observers see marine mammals within or about to enter the designated exclusion zone, the *Langseth* would immediately power down or shutdown the airguns. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Proposed Exclusion Zones: The Observatory would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which one would expect to receive sound levels (160-, 180-, or 190-dB) from the airgun subarrays and a single airgun.

TABLE 3—MODELED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 180 dB RE: 1 μPA COULD BE RECEIVED DURING THE PROPOSED SURVEY OFFSHORE NEW JERSEY IN THE NORTH ATLANTIC OCEAN, MAY THROUGH AUGUST 2014

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances [1] (m)		
			190 dB [2]	180 dB	160 dB
Single Bolt airgun (40-in^3)	6	<100	21	100	995
4-Airgun subarray (700-in^3)	4.5	<100	101	378	5,240
4-Airgun subarray (700-in^3)	6	<100	118	439	6,100
8-Airgun subarray (1,400-in^3)	4.5	<100	128	478	6,670
8-Airgun subarray (1,400-in^3)	6	<100	157	585	8,150

[1] Predicted distances based on Table 1 of the Foundation's application.

[2] The Observatory did not request take for pinniped species in their application and consequently did not include distances for the 190-dB isopleth for pinnipeds in Table 1 of their application. Because NMFS anticipates that pinnipeds have the potential to occur in the survey area, the Observatory calculated the distances for the 190-dB isopleth and submitted them to NMFS on February 28, 2014 for inclusion in this table.

The 180- or 190-dB level shutdown criteria are applicable to cetaceans as specified by NMFS (2000). The Observatory used these levels to establish the exclusion zones.

If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

Power Down Procedures—A power down involves decreasing the number of airguns in use such that the radius of the 180- or 190-dB zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in^3). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180- or 190-dB exclusion zone before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in^3 airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 3), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down—Following a power-down, the *Langseth* crew would not resume full airgun activity until the marine mammal has cleared the 180- or 190-dB exclusion zone (see Table 3). The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The *Langseth* crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

We estimate that the *Langseth* would transit outside the original 180- or 190-dB exclusion zone after an 8-minute wait period. This period is based on the 180- or 190-dB exclusion zone for the airgun subarray towed at a depth of 12 m (39.4 ft) in relation to the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures—The *Langseth* crew would shutdown the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an observer sees the animal is initially within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for north Atlantic right whales, the *Langseth* crew would shutdown the airgun(s) immediately in the unlikely event that observers detect this species, regardless of the distance from the vessel. The *Langseth* would only begin ramp-up would only if observers have not seen the north Atlantic right whale for 30 minutes.

Resuming Airgun Operations After a Shutdown—Following a shutdown in excess of eight minutes, the *Langseth* crew would initiate a ramp-up with the smallest airgun in the array (40-in^3). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would

implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-Up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. The Observatory would follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when shut down has exceeded that period. The Observatory has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, the Observatory would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, the Observatory would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The Observatory would not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones.

Speed and Course Alterations

If during seismic data collection, the Observatory detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed and/or course can result in an extended period of time to realign onto the transect. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Mitigation Conclusions

NMFS has carefully evaluated the Observatory's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of the Observatory's proposed measures, as well as other measures considered, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) 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 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 we expect to be present in the proposed action area.

The Observatory submitted a marine mammal monitoring plan in section XIII of the Authorization application. NMFS or the Observatory may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

The Observatory proposes to sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization. The Observatory understands that NMFS would review the monitoring plan and may require refinements to the plan.

The Observatory planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, the Observatory is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical for the Observatory.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustic detect cetaceans.

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, which is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Pamguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the four visual observers. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm

whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which the Observatory must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the Observatory would conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

The Observatory would submit a report to us and to the Foundation within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals and turtles near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the take to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Observatory shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with the Observatory to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Observatory may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Observatory will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with the Observatory to determine whether modifications in the activities are appropriate.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Observatory would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300, within 24 hours of the discovery. The Observatory would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

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].

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the airgun sub-arrays may have the potential to result in the behavioral disturbance of some marine mammals. Thus, NMFS proposes to authorize take by Level B harassment resulting from the operation of the sound sources for the proposed seismic survey based upon the current acoustic exposure criteria shown in Table 4. Our practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

TABLE 4—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).

The probability of vessel and marine mammal interactions (i.e., ship strike) occurring during the proposed survey is unlikely due to the *Langseth's* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of seismic operations, the Langseth's cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist et al., 2001). In addition, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The *Langseth's* bridge offers good visibility to visually monitor for marine mammal presence; observers posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the observers receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea. Thus, NMFS does not anticipate that take would result from the movement of the vessel.

The Observatory did not estimate any additional take allowance for animals that could be affected by sound sources other than the airgun. NMFS does not expect that the sound levels produced by the echosounder, sub-bottom profiler, and ADCP would exceed by the sound levels produced by the airguns for the majority of the time. Because of the beam pattern and directionality of these sources, combined with their lower source levels, it is not likely that these sources would take marine mammals independently from the takes that the Observatory has estimated to result from airgun operations. Therefore, NMFS does not believe it is necessary to authorize additional takes for these sources for the action at this time. NMFS is currently evaluating the broader use of these types of sources to determine under what specific circumstances coverage for incidental take would or would not be advisable. NMFS is working on guidance that would outline a consistent recommended approach for applicants to address the potential impacts of these types of sources.

NMFS considers the probability for entanglement of marine mammals as low because of the vessel speed and the monitoring efforts onboard the survey vessel. Therefore, NMFS does not believe it is necessary to authorize additional takes for entanglement at this time.

There is no evidence that planned activities could result in serious injury or mortality within the specified geographic area for the requested Authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

The following sections describe the Observatory's methods to estimate take by incidental harassment. The Observatory based their estimates on the number of marine mammals that could be harassed by seismic operations with the airgun sub-array during approximately 4,900 km^2 (approximately 1,926.6 square miles (mi^2) of transect lines in the northwest Atlantic Ocean as depicted in Figure 1 (Figure 1 of the Observatory's application).

Ensonified Area Calculations: In order to estimate the potential number of marine mammals exposed to airgun sounds, the Observatory considers the total marine area within the 160-dB radius around the operating airguns. This ensonified area includes areas of overlapping transect lines. They determine the ensonified area by entering the planned survey lines into a MapInfo GIS, using the software to identify the relevant areas by ''drawing'' the applicable 160-dB buffer (see Table 3; Table 1 in the application) around each seismic line, and then calculating the total area within the buffers.

Because the Observatory assumes that the *Langseth* may need to repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey; they have increased the proposed number of line-kilometers for the seismic operations from approximately 2,002 km (1,244 mi) by 25 percent to 2,502 km (1,555 mi) to account for these contingency operations.

Exposure Estimates: The Observatory calculates the numbers of different individuals potentially exposed to approximately 160 dB re: 1 μPa_{rms} by multiplying the expected species density estimates (in number/km^2) for that area in the absence of a seismic program times the estimated area of ensonification (i.e., 2,502 km; 1,555 mi).

Table 3 of their application presents their estimates of the number of different individual marine mammals that could potentially experience exposures greater than or equal to 160 dB re: 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The Observatory used the Strategic Environmental Research and Development Program's (SERDP) spatial decision support system (SDSS) Marine Animal Model Mapper tool (Read et al. 2009) to calculate cetacean densities within the survey area based on the U.S. Navy's ''OPAREA Density Estimates'' (NODE) model (DoN, 2007). The NODE model derives density estimates using density surface modeling of the existing line-transect

data, which uses sea surface temperature, chlorophyll *a,* depth, longitude, and latitude to allow extrapolation to areas/seasons where marine mammal survey data collection did not occur. The Observatory used the SERDP SDSS tool to obtain mean densities in a polygon the size of the seismic survey area for 19 cetacean species during summer (June through August).

For the proposed Authorization, NMFS has reviewed the Observatory's take estimates presented in Table 3 of their application and has revised take calculations for several species based upon the best available density information from SERDP SDSS and other sources. These include takes for blue, fin, humpback, minke, north Atlantic right, and sei whales; harbor porpoise; and gray, harbor, and harp seals. Table 5 presents the revised estimates of the possible numbers of marine mammals exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed seismic survey.

TABLE 5—DENSITIES AND ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPA DURING THE PROPOSED SEISMIC SURVEY IN THE NORTH ATLANTIC OCEAN, DURING MAY THROUGH AUGUST 2014

Species	Density estimate [1]	Est. number of individuals exposed to sound levels ≥ 160 dB	Proposed take authorization [2]	Percent of species or stock [3]	Population trend [3]
North Atlantic right whale	[4] 0.283	1	3	0.23	Increasing.
Humpback whale	[5] 0.154	1	2	0.12	Increasing.
Common minke whale	0	0	2	Unknown	No data.
Sei whale	0.161	1	2	0.28	No data.
Fin whale	0.002	1	2	0.03	No data.
Blue whale	[6] 6.74	17	17	3.86	No data.
Sperm whale	7.06	18	18	1.13	No data.
Dwarf sperm whale	0.001	2	2	0.19	No data.
Pygmy sperm whale	0.001	2	2	0.27	No data.
Cuvier's beaked whale	0.124	3	3	0.06	No data.
Gervais' beaked whale	0.124	3	3	0.16	No data.
Sowerby's beaked whale	0.124	3	3	0.08	No data.
Unidentified Mesoplodon: True's, Blainville, northern bottlenose whale.	0.124	1	3	0.45	No data.
Rough-toothed dolphin	0	0	0	0.00	No data.
Bottlenose dolphin (pelagic)	111.3	279	279	0.34	No data.
Bottlenose dolphin (coastal)	111.3	.....	.....	2.91	No data.
Pantropical spotted dolphin	0	0	0	0.00	No data.
Atlantic spotted dolphin	36.1	90	90	0.34	No data.
Spinner dolphin	0	0	0	0.00	No data.
Striped dolphin	0	0	47	0.10	No data.
Short-beaked common dolphin	0	0	18	0.03	No data.
White-beaked dolphin	0	0	0	0.00	No data.
Atlantic white-sided dolphin	0	0	15	0.03	No data.
Risso's dolphin	13.6	35	35	0.23	No data.
False killer whale	0	0	0	0.00	No data
Pygmy killer whale	0	0	0	0.00	No data.
Killer whale	0	0	0	0.00	No data.
Long-finned pilot whale	0.184	1	9	0.07	No data.
Short-finned pilot whale	0.184	1	9	0.04	No data.
Harbor porpoise	[4] 0.009	1	2	0.001	No data.
Gray seal	No data	0	12	0.003	Increasing.
Harbor seal	[4] 44.43	112	112	0.11	No data.
Harp seal	No data	0	4	0.00005	Increasing.

[1] Except where noted, densities are the mean values for the survey area calculated from the SERDP SDSS NODES summer model (Read et al., 2009) as presented in Table 3 of the Observatory's application.

[2] Proposed take includes increases for mean group size or cow/calf pairs based on Palka, 2012; NJDEP, 2010; or increases for gray and harp seals based on stranding data from the NJ Marine Mammal Stranding Center.

[3] Table 1 in this notice lists the stock species abundance estimates used in calculating the percentage of species/stock. Population trend information from Waring et al., 2012. No data = Insufficient data to determine population trend.

[4] NMFS revised estimate based on the NODES model using the spring mean density estimate for that species in survey area.

[5] NMFS revised estimate based on the SERDP SDSS Duke Habitat Model using the summer mean density estimate for humpback whales in survey area.

[6] NMFS revised estimate based on the SERDP SDSS Duke Habitat Model using the summer mean density estimate for baleen whales in survey area.

Encouraging and Coordinating Research

The Observatory would coordinate the planned marine mammal monitoring program associated with the seismic survey in the northwest Atlantic Ocean with applicable U.S. agencies.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact' is ''an impact resulting from the specified activity that

cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (i.e., population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, and the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, the Observatory's specified activities are not likely to cause long-term behavioral disturbance, permanent threshold shift, or other non-auditory injury, serious injury, or death. They include:

- The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;
- The relatively low potential for temporary or permanent hearing impairment and the likelihood that the Observatory would avoid this impact through the incorporation of the required monitoring and mitigation measures (including power-downs and shutdowns); and
- The likelihood that marine mammal detection ability by trained visual observers is high at close proximity to the vessel.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the Observatory's proposed activities, and NMFS does not propose to authorize injury, serious injury, or mortality at this time. We anticipate only behavioral disturbance to occur during the conduct of the survey activities.

Table 5 in this document outlines the number of requested Level B harassment takes that we anticipate as a result of these activities. NMFS anticipates that 26 marine mammal species (6 mysticetes, 17 odontocetes, and 3 pinnipeds) would likely occur in the proposed action area. Of the 24 marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA and depleted under the MMPA, including: The blue, fin, humpback, north Atlantic right, sei, and sperm whales.

Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. In addition, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 30 days. Additionally, the seismic survey would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for shorter less than day.

Based on this notice's analysis of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the Observatory's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that the Observatory's activities could potentially affect, by Level B harassment only, 26 species of marine mammals under our jurisdiction. For each species, these estimates are small numbers (each, less than or equal to four percent) relative to the population size and we have provided the regional population estimates for the marine mammal species that may be taken by Level B harassment in Table 5 in this notice.

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 mitigation and monitoring measures, NMFS preliminarily finds that the Observatory's proposed activity would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species that may occur in the proposed survey area, several are listed as endangered under the Endangered Species Act, including the blue, fin, humpback, north Atlantic right, sei, and sperm whales. Under section 7 of the ESA, the Foundation has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) will also consult internally with NMFS on the proposed issuance of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS and the Foundation will conclude the consultation prior to a determination on the issuance of the Authorization.

National Environmental Policy Act (NEPA)

The Foundation has prepared a draft EA titled ''Draft Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Atlantic Ocean off New Jersey, June–July 2014.'' NMFS has posted this draft EA on our Web site concurrently with the publication of this notice. NMFS will independently evaluate the Foundation's draft EA and determine whether or not to adopt it or prepare a separate NEPA analysis and incorporate relevant portions of the Foundation's draft EA by reference. NMFS will review all comments submitted in response to this notice to complete the NEPA process prior to making a final decision on the Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes issuing an Authorization to the Observatory for conducting a seismic survey in the northwest Atlantic Ocean off the New Jersey coast May 29, 2014 through August 17, 2014, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Draft Proposed Authorization

This section contains the draft text for the proposed Authorization. NMFS proposes to include this language in the Authorization if issued.

Incidental Harassment Authorization

We hereby authorize the Lamont-Doherty Earth Observatory (Observatory), Columbia University, P.O. Box 1000, 61 Route 9W, Palisades, New York 10964–8000, under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to incidentally harass small numbers of marine mammals incidental to a marine geophysical survey conducted by the R/V *Marcus G. Langseth* (*Langseth*) marine geophysical survey in the northwest Atlantic Ocean off the New Jersey coast May 29, 2014 through August 17, 2014.

1. Effective Dates

This Authorization is valid from May 29, 2014 through August 17, 2014.

2. Specified Geographic Region

This Authorization is valid only for specified activities associated with the R/V Marcus G. Langseth's (*Langseth*) seismic operations as specified in the Observatory's Incidental Harassment Authorization (IHA) application and environmental analysis in the following specified geographic area:

a. In the Atlantic Ocean bounded by the following coordinates: Approximately 25 to 85 km (15.5 to 52.8 mi) off the coast of New Jersey between approximately 39.3–39.7° N and approximately 73.2–73.8° W as specified in the Observatory's application and the National Science Foundation's environmental analysis.

3. Species Authorized and Level of Takes

a. This authorization limits the incidental taking of marine mammals, by Level B harassment only, to the following species in the area described in Condition 2(a):

i. Mysticetes—3 north Atlantic right whales; 2 humpback whales; 2 common minke whales; 2 sei whales; 2 fin whales; and 17 blue whales.

ii. Odontocetes—18 sperm whales; 2 dwarf sperm whales; 2 pygmy sperm whales; 3 Cuvier's beaked whales; 3 Gervais beaked whales; 3 Sowerby's beaked whales; 3 unidentified Mesoplodon species (includes True's and Blainville beaked and northern bottlenose whales); 279 bottlenose dolphins (coastal or pelagic); 90 Atlantic spotted dolphins; 47 striped dolphins; 18 short-beaked common dolphins; 15 Atlantic white-sided dolphins; 35 Risso's dolphins; 9 long-finned pilot whales; 9 short-finned pilot whales; and 2 harbor porpoises.

iii. Pinnipeds—8 gray seals; 112 harbor seals; and 4 harp seals.

iv. During the seismic activities, if the Holder of this Authorization encounters any marine mammal species that are not listed in Condition 3 for authorized taking and are likely to be exposed to sound pressure levels greater than or equal to 160 decibels (dB) re: 1 μPa, then the Holder must alter speed or course or shut-down the airguns to avoid take.

b. This Authorization prohibits the taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3 or the taking of any kind of any other species of marine mammal. Thus, it may result in the modification, suspension or revocation of this Authorization.

c. This Authorization limits the methods authorized for taking by Level B harassment to the following acoustic sources without an amendment to this Authorization:

i. A sub-airgun array with a total capacity of 1,700 in^3 (or smaller);

ii. an acoustic Doppler current profiler;

iii. a multi-beam echosounder; and

iv. a sub-bottom profiler.

4. Reporting Prohibited Take

The Holder of this Authorization must report the taking of any marine mammal in a manner prohibited under this Authorization immediately to the Office of Protected Resources, National Marine Fisheries Service, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov.*

5. Cooperation

We require the Holder of this Authorization to cooperate with the Office of Protected Resources, National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

6. Mitigation and Monitoring Requirements

We require the Holder of this Authorization to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable adverse impact on affected marine mammal species or stocks:

Visual Observers

a. Utilize two, National Marine Fisheries Service-qualified, vessel-based Protected Species Visual Observers (visual observers) to watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from civil twilight-dawn to civil twilight-dusk) and before and during start-ups of airguns day or night.

i. At least one visual observer will be on watch during meal times and restroom breaks.

ii. Observer shifts will last no longer than four hours at a time.

iii. Visual observers will also conduct monitoring while the *Langseth* crew deploy and recover the airgun array and streamers from the water.

iv. When feasible, visual observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavioral reactions during, between, and after airgun operations.

v. The *Langseth's* vessel crew will also assist in detecting marine mammals, when practicable. Visual observers will have access to reticle binoculars (7x50 Fujinon), and big-eye binoculars (25x150).

Exclusion Zones

b. Establish a 180-decibel (dB) or 190-dB exclusion zone (zone) for cetaceans and pinnipeds, respectively before starting the airgun subarray (1,700 in^3); and a 180-dB or 190-dB exclusion zone

for cetaceans and pinnipeds, respectively for the single airgun (40 in^3). Observers will use the predicted radius distance for the 180-dB or 190-dB exclusion zone for cetaceans and pinnipeds.

Visual Monitoring at the Start of Airgun Operations

c. Monitor the entire extent of the zones for at least 30 minutes (day or night) prior to the ramp-up of airgun operations after a shutdown.

d. Delay airgun operations if the visual observer sees a cetacean within the 180-dB zone for cetaceans or 190-dB zone for pinnipeds until the marine mammal(s) has left the area.

i. If the visual observer sees a marine mammal that surfaces, then dives below the surface, the observer shall wait 30 minutes. If the observer sees no marine mammals during that time, he/she should assume that the animal has moved beyond the 180-dB zone for cetaceans or 190-dB zone for pinnipeds.

ii. If for any reason the visual observer cannot see the full 180-dB zone for cetaceans or the 190-dB zone for pinnipeds for the entire 30 minutes (*i.e.,* rough seas, fog, darkness), or if marine mammals are near, approaching, or within zone, the *Langseth* may not resume airgun operations.

iii. If one airgun is already running at a source level of at least 180 dB re: 1 μPa or 190 dB re: 1 μPa, the *Langseth* may start the second gun—and subsequent airguns—without observing relevant exclusion zones for 30 minutes, provided that the observers have not seen any marine mammals near the relevant exclusion zones (in accordance with Condition 6(b)).

Passive Acoustic Monitoring

e. Utilize the passive acoustic monitoring (PAM) system, to the maximum extent practicable, to detect and allow some localization of marine mammals around the *Langseth* during all airgun operations and during most periods when airguns are not operating. One visual observer and/or bioacoustician will monitor the PAM at all times in shifts no longer than 6 hours. A bioacoustician shall design and set up the PAM system and be present to operate or oversee PAM, and available when technical issues occur during the survey.

f. Do and record the following when an observer detects an animal by the PAM:

i. Notify the visual observer immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

ii. Enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

Ramp-Up Procedures

g. Implement a ''ramp-up'' procedure when starting the airguns at the beginning of seismic operations or anytime after the entire array has been shutdown, which means start the smallest gun first and add airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period. During ramp-up, the observers will monitor the exclusion zone, and if marine mammals are sighted, a course/speed alteration, power-down, or shutdown will be implemented as though the full array were operational.

Recording Visual Detections

h. Visual observers must record the following information when they have sighted a marine mammal:

i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

ii. Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and

iii. The data listed under 6(f)(ii) at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

Speed or Course Alteration

i. Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, the Holder of this Authorization will implement further mitigation measures, such as a shutdown.

Power-Down Procedures

j. Power down the airguns if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zones. A power-down means reducing the number of operating airguns to a single operating 40 in^3 airgun. This would reduce the exclusion zone to the degree that the animal(s) is outside of it.

Resuming Airgun Operations After a Power-Down

k. Following a power-down, if the marine mammal approaches the smaller designated exclusion zone, the airguns must then be completely shut-down. Airgun activity will not resume until the observer has visually observed the marine mammal(s) exiting the exclusion zone and is not likely to return, or has not been seen within the exclusion zone for 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

l. Following a power-down and subsequent animal departure, the *Langseth* may resume airgun operations at full power. Initiation requires that the observers can effectively monitor the full exclusion zones described in Condition 6(b). If the observer sees a marine mammal within or about to enter the relevant zones then the *Langseth* will implement a course/speed alteration, power-down, or shutdown.

Shutdown Procedures

m. Shutdown the airgun(s) if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zone. A shutdown means that the *Langseth* turns off all operating airguns.

n. If a North Atlantic right whale (*Eubalaena glacialis*) is visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 minutes after the last documented whale visual sighting.

Resuming Airgun Operations After a Shutdown

o. Following a shutdown, if the observer has visually confirmed that the animal has departed the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds within a period of less than

or equal to 8 minutes after the shutdown, then the *Langseth* may resume airgun operations at full power.

p. Else, if the observer has not seen the animal depart the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds, the *Langseth* shall not resume airgun activity until 15 minutes has passed for species with shorter dive times (*i.e.,* small odontocetes and pinnipeds) or 30 minutes has passed for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). The *Langseth* will follow the ramp-up procedures described in Conditions 6(g).

Survey Operations at Night

q. The *Langseth* may continue marine geophysical surveys into night and low-light hours if the Holder of the Authorization initiates these segment(s) of the survey when the observers can view and effectively monitor the full relevant exclusion zones.

r. This Authorization does not permit the Holder of this Authorization to initiate airgun array operations from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the visual observers cannot view and effectively monitor the full relevant exclusion zones.

s. To the maximum extent practicable, the Holder of this Authorization should schedule seismic operations (*i.e.,* shooting the airguns) during daylight hours.

Mitigation Airgun

t. The *Langseth* may operate a small-volume airgun (*i.e.,* mitigation airgun) during turns and maintenance at approximately one shot per minute. The *Langseth* would not operate the small-volume airgun for longer than three hours in duration during turns. During turns or brief transits between seismic tracklines, one airgun would continue to operate.

7. Reporting Requirements

This Authorization requires the Holder of this Authorization to:

a. Submit a draft report on all activities and monitoring results to the Office of Protected Resources, National Marine Fisheries Service, within 90 days of the completion of the *Langseth's* cruise. This report must contain and summarize the following information:

i. Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings;

ii. Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of shutdowns), observed throughout all monitoring activities.

iii. An estimate of the number (by species) of marine mammals with known exposures to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa for cetaceans and 190-dB re 1 μPa for pinnipeds and a discussion of any specific behaviors those individuals exhibited.

iv. An estimate of the number (by species) of marine mammals with estimated exposures (based on modeling results) to the seismic activity at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa for cetaceans and 190-dB re 1 μPa for pinnipeds with a discussion of the nature of the probable consequences of that exposure on the individuals.

v. A description of the implementation and effectiveness of the: (A) terms and conditions of the Biological Opinion's Incidental Take Statement (attached); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report will confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act listed marine mammals.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, within 30 days after receiving comments from us on the draft report. If we decide that the draft report needs no comments, we will consider the draft report to be the final report.

8. Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the take to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Observatory shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with the Observatory to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Observatory may not resume their activities until notified by us via letter, email, or telephone.

9. Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Observatory will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with the Observatory to determine whether modifications in the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal Unrelated to the Activities

In the event that the Observatory discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously

wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Observatory would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Northeast Regional Stranding Coordinator at (978) 281–9300, within 24 hours of the discovery. The Observatory would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

11. Endangered Species Act Biological Opinion and Incidental Take Statement

The Observatory is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to the Endangered Species Act Biological Opinion issued to the National Science Foundation and NMFS' Office of Protected Resources, Permits and Conservation Division (attached). A copy of this Authorization and the Incidental Take Statement must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS requests comments on our analysis, the draft authorization, and any other aspect of the Notice of proposed Authorization for the Observatory's activities. Please include any supporting data or literature citations with your comments to help inform our final decision on the Observatory's request for an application.

Dated: March 10, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–05553 Filed 3–14–14; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 51 March 17, 2014

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 25 and 32

2013–2014 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

[Docket No. FWS–HQ–NWRS–2013–0074: FXRS12650900000–134–FF09R20000]

RIN 1018–AZ87

2013–2014 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds 6 national wildlife refuges to the list of areas open for hunting and/or sport fishing, adds new hunts at 6 refuges, increases the hunting activities available at 20 other refuges, and increases fishing opportunities at 2 refuges, along with adopting pertinent refuge-specific regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2013–2014 season.

DATES: This rule is effective March 17, 2014.

FOR FURTHER INFORMATION CONTACT: Paul F. Steblein, (703) 358–2678.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges (NWRs) in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We periodically review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open NWRs to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are standardizing and clarifying the language of existing regulations.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive

conservation plans and specific plans, and by annual review of hunting and sport fishing programs and regulations.

Response to Comments Received

In the September 24, 2013, **Federal Register** (78 FR 58754), we published a proposed rule identifying changes pertaining to migratory game bird hunting, upland game bird hunting, big game hunting, and sport fishing to existing refuge-specific regulations on certain refuges for the 2013–2014 season. We received more than 1,400 comments on the proposed rule during its 30-day comment period. 1,342 of those comments were opposed to the proposed rule, and 58 were supportive of the rule. The remainder expressed neither support nor opposition to the proposed rule but supplied comments. We discuss the comments we received in the summary that follows.

Comment 1: Numerous commenters expressed concern regarding a proposed prohibition on falconry at Bosque del Apache NWR and Sevilleta NWR, both located in the State of New Mexico. The commenters state that we offer no explanation in the cumulative impacts report and no environmental, biological, or other such scientific justification for this prohibition. They contend that falconry is a legal means of hunting and take in the State of New Mexico, as it is in 49 of the 50 States. They object strongly to what appears to be ''prejudicial and a denied equitable public opportunity'' on the above-mentioned refuges and request that we remove such a bias from the regulations by allowing falconry.

Response 1: By law, refuges may be more conservative than the States when setting individual refuge-specific regulations but may not more liberal.

Regarding policy specific to falconry, Service policy, as outlined in our Service manual at 605 FW 2.7M (Special Hunts), stipulates, ''We will address special types of hunts, such as falconry, in the hunt section of the visitor service plan (VSP).'' In other words, each refuge manager, when developing their step-down visitor service's plan (which would include a hunt plan, if appropriate) from their comprehensive conservation plan, must first determine if hunting is compatible. Assuming it is found to be compatible, the refuge manager would next determine the conduct of the hunt which might include the use of falconry. A refuge manager has discretion to prohibit hunting, specifically falconry, in certain cases such as if endangered or threatened species are present; thus, this issue is decided individually on a refuge-by-refuge basis.

Falconry for any species has never occurred on Bosque del Apache NWR, so we have not completed an assessment of short-term, long-term, or cumulative impacts related to this type of special hunt. There is concern regarding the potential take of non-target species if we allow falconry at Bosque del Apache NWR. The refuge is particularly concerned about falconry due to non-target bird species listed federally or by the State as endangered or threatened, including the southwestern willow flycatcher and yellow billed cuckoo that forage on the refuge during spring and fall migration. Therefore, we made no changes to the rule as a result of this comment.

Proposed changes to the regulations for Bosque del Apache and Sevilleta NWRs were developed at the same time, and this prohibition on falconry was inadvertently added to the changes proposed for Sevilleta NWR. Sevilleta NWR allows falconry on the refuge, and anyone using this method of take must follow all refuge and State regulations when hunting. As such, we have removed the prohibition on falconry at Sevilleta NWR from this final rule.

Comment 2: A commenter questioned the ''rigorous scientific research into the status of refuge wildlife populations'' and whether we were using this information to guide refuge planning. The commenter went on to say that a determination must be made that ''wildlife are surplus to a balanced conservation program on any wildlife area,'' and that ''unless the species is damaging or destroying federal property within a refuge, the species cannot be subject to live removal or lethal control, including through official animal control operations.'' They believe that ''refuges often fail to have refuge specific monitoring of harvest levels,'' and discussed the concept of an ''inviolate sanctuary.'' Finally, the commenter believes that since ''25 million people visit refuges for wildlife observation'' and ''only 9 million visit to hunt or trap'' that non-consumptive users should enjoy a higher priority when it comes to use of refuge lands.

Response 2: The commenter acknowledges that the ''Improvement Act upgrades hunting and fishing to a priority use. . .'' Each refuge manager makes a decision regarding hunting on that particular refuge only after rigorous examination of the available information. Developing or referencing a comprehensive conservation plan (CCP), a 15-year plan for the refuge, is generally the first step a refuge manager takes. Our policy for managing units of the Refuge System is that we will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. The next step for refuge managers is developing or referencing step-down plans, of which a hunting plan would be one. Part of the process for opening a refuge to hunting after completing the step-down plan would be appropriate compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), such as conducting an environmental assessment accompanied by the appropriate decision documentation (record of decision, finding of no significant impact, or environmental action memorandum or statement). The rest of the elements in the opening package are: Section 7 evaluation, copies of letters requesting State and/or tribal involvement, draft news release and outreach plan, and finally draft refuge-specific regulatory language. The CCP, hunt plan, and NEPA are made available and request public comments, as does the proposed rule, before we allow hunting on a refuge.

In sum, this illustrates that the decision to allow hunting on an NWR is not a quick or simple process. It is full of deliberation and discussion, including review of all available data to determine the relative health of a population before we allow it to be hunted. In the case of migratory game bird hunting, the Service annually prescribes frameworks for dates and times when migratory bird hunting may occur in the United States, and the number of birds that hunters may take and possess. We write these regulations after giving due regard to ''the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and update the information annually. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), Congress authorized the Secretary of the Interior to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any . . . bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. The Secretary of the Interior delegated this responsibility to the Service as the lead

Federal agency for managing and conserving migratory birds in the United States.

Because the Service is required to take abundance of migratory birds and other factors into consideration, we undertake a number of surveys throughout the year in conjunction with the Canadian Wildlife Service, State and Provincial wildlife management agencies, and others. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest. After we establish frameworks for season lengths, bag limits, and areas for migratory bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons.

As discussed in the cumulative impacts report (available on *http://www.regulations.gov* under Docket No. FWS–HQ–NWRS–2013–0074), we took a look at the cumulative impact that the 2013–2014 proposed rule would have on migratory birds, resident wildlife, non-hunted migratory and resident wildlife, endangered and threatened species, habitats and plant resources, other wildlife-dependent recreational uses, physical resources (air, water, soils), cultural resources, refuge facilities, solitude, and cumulative socioeconomic impacts.

Collectively, we estimate that the proposed actions on the 22 refuges with increased migratory game bird hunting would be 12,616 ducks (0.0008 percent of the estimated national harvest) and 2,463 geese (0.0008 percent of the estimated national harvest). In short, we project that harvests of these species on the 22 refuges will constitute an extremely minor component of the national harvests.

We allow hunting of resident wildlife on NWRs only if such activity has been determined compatible with the establishment purpose(s) of the refuge and the mission of the Refuge System as required by the Administration Act. Hunting of resident wildlife on NWRs generally occurs consistent with State regulations, including seasons and bag limits. Refuge-specific hunting regulations can be more restrictive (but not more liberal) than State regulations and often are in order to help meet specific refuge objectives. These include resident wildlife population and habitat objectives, minimizing disturbance impacts to wildlife, maintaining high-quality opportunities for hunting and other wildlife-dependent recreation, eliminating or minimizing conflicts with other public uses and/or refuge management activities, and protecting public safety.

Please consult the cumulative impacts report at the Web site referenced above for a more indepth discussion, but in sum, none of the known, estimated, or projected harvests of big game, small game, or upland game species resulting from the proposed hunting activities on refuges was determined or expected to have significant adverse direct, indirect, or cumulative impacts to any big game, small game, or upland game wildlife population.

The Migratory Bird Conservation Act of 1929 (16 U.S.C. 715–715d, 715e, 715f–715r) authorizes acquisition of refuges as ''inviolate sanctuaries'' where the birds could rest and reproduce in total security. In 1949, this ''inviolate sanctuary'' concept was modified by an amendment to the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718a *et seq.*), which allowed hunting on up to 25 percent of each inviolate refuge. In 1958, another amendment to the Migratory Bird Hunting and Conservation Stamp Act increased the total area of an inviolate refuge that could be opened for hunting to up to 40 percent. This provision is reflected in the Administration Act at 16 U.S.C. 668dd(d)(1)(A).

Note that not all refuges are inviolate sanctuaries. If we acquired a refuge as an inviolate sanctuary, we may open up to 40 percent of that refuge's area for hunting of migratory game birds. However, if we acquired a refuge without the stipulation that it be an inviolate sanctuary, we may open 100 percent of the refuge's area for hunting.

The Fish and Wildlife Improvement Act of 1978 (Pub. L. 95–616) amended section 6 of the Administration Act to provide for the opening of all or any portion of an inviolate sanctuary to the taking of migratory birds if taking is determined to be beneficial to the species. Such opening of more than 40 percent of the refuge to hunting is determined by species. This amendment refers to inviolate sanctuaries created in the past or to be created in the future. It has no application to areas acquired for other management purposes.

Most refuge hunt programs have established refuge-specific regulations to improve the quality of the hunting experience as well as provide for quality wildlife-dependent experiences for other users. Refuge visitor use programs are adjusted, as needed, to eliminate or minimize conflicts between users. Virtually all of the refuges open to hunting and other wildlife-dependent recreational uses use time and space zoning as an effective method to reduce conflicts between hunting and other uses. Eliminating or restricting overlap between hunt areas and popular areas for other wildlife-dependent recreation allows opportunity for other users to safely enjoy the refuge in non-hunted areas during hunting seasons. Restrictions on the number of hunters and the time in which they could hunt are also frequently used to minimize conflicts between user groups. Public outreach accompanying the opening of hunting seasons is frequently used to make other wildlife-dependent recreational users aware of the seasons and minimize conflicts. We made no changes to the rule as a result of this comment.

Comment 3: Several commenters felt the use of lead was inappropriate on NWRs. One commenter cites several studies on the negative effects of lead on both wildlife and humans. They urge the Service to prohibit the use of lead shots, bullets, and fishing weights on all NWRs.

Response 3: Lead shot for waterfowl hunting has been illegal on NWRs since 1998.

Lead is a toxic metal that, in sufficient quantities, has adverse effects on the nervous and reproductive systems of animals and can be lethal to wildlife if ingested, even in small amounts. We continue to look at options and ways to reduce the indirect impacts of toxic shot to scavengers. We are and have been phasing out the use of lead shot by small and big game hunters on refuge lands.

The Improvement Act directs us to make refuge regulations as consistent with State regulations as practicable. We share a strong partnership with the States in managing wildlife, and, therefore, we are developing a strategy to reduce risk due to lead in a coordinated manner with State wildlife agencies. We made no changes to the rule as a result of these comments.

Comment 4: A commenter felt that ''working public'' needs more than 30 days to comment on this proposed rule. In addition, the commenter believes the comment period should be extended since it overlapped with the government shutdown.

Response 4: We believe the 30-day public comment period is sufficient. The process of opening refuges is done in stages, with the fundamental work being done on the ground at the refuge and in the community where the program is administered. In these stages,

the public is provided opportunities to comment, for example, on the comprehensive conservation plans, the compatibility determinations, the hunt plans, and accompanying NEPA documents. The final stage for public comment is when we publish the proposed rule in the **Federal Register**, for which we commonly provide a 30-day comment period.

We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these proposals would relieve restrictions and allow the public to participate in wildlife-dependent recreational activities for the first time on a number of refuges. Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

Although the public comment period did overlap with the government shutdown, the proposed rule was published in the **Federal Register**, and the Web site where the public submitted comments, *http://www.regulations.gov,* was open during the entire 30-day comment period. We made no changes to the rule as a result of this comment.

Comment 5: A commenter opined that hunting should be banned on NWRs because hunters will be too selective, only hunting the best-looking animals, shifting the genetic makeup of the whole population.

Response 5: We disagree with the above comment and do not think hunters will have a big enough impact to affect the genetic makeup of a whole population. We are not aware of any information that suggests hunting programs, as they are conducted, on refuges are shifting the genetic makeup of a population. In many cases, hunting is a tool used to manage populations and ensure a healthy ecosystem.

The numbers of animals taken is too small to shift the genetic makeup of a population. Please refer to the cumulative impacts report. The report explains the cumulative impact that the 2013–2014 proposed rule would have on migratory birds, resident wildlife, non-hunted migratory and resident wildlife, endangered and threatened species, habitats and plant resources, other wildlife-dependent recreational uses, physical resources (air, water, soils), cultural resources, refuge facilities, solitude, and cumulative socioeconomic impacts.

Comment 6: A commenter stated, ''It already has been scientifically determined that the waterfowl population in Florida is in general decline, due to prolonged drought conditions in that state.'' They believe Arthur R. Marshall Loxahatchee NWR should temporarily suspend waterfowl hunting.

Response 6: Waterfowl regulations and bag limits are created on a national level. Hunting opportunities available to the public should not have a substantial effect on waterfowl abundance or distribution due to low-to-moderate hunting pressure on the refuge, as well as the established sanctuary area (79 percent of the refuge). Compared to other surrounding areas, the refuge only contributes a small portion of the total waterfowl harvest in south Florida (Florida Fish and Wildlife Conservation Commission 2011). We made no changes to the rule as a result of this comment.

Comment 7: A commenter noted the oceans are being depleted of fish, and, therefore, Arthur R. Marshall Loxahatchee NWR should not allow sport fishing.

Response 7: Sport fishing is allowed on designated areas of the refuge in accordance with State and Federal regulations subject to the conditions set forth at 50 CFR part 32. The refuge is a freshwater system, and fish in the refuge reproduce rapidly compared to longer lived salt water species in the oceans. Further, most of the fishing at the refuge is catch-and-release; the refuge has an average 90 percent catch-and-release rate on large-mouth bass based on a fisherman creel survey conducted in 2011. We made no changes to the rule as a result of this comment.

Comment 8: Numerous commenters felt hunting is incompatible with the statutory framework that created Arthur R. Marshall Loxahatchee NWR; these commenters noted that the refuge protects the endangered Everglades snail kite (*Rostrhamus sociabilis plumbeus*) and serves as the subspecies' designated critical habitat. Several commenters expanded this thought to state that they believe we would be violating the Migratory Bird Treaty Act, for which the refuge was established, and the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) if we allow hunting on the refuge, due to the disturbance it would create.

Response 8: The Migratory Bird Conservation Act of 1929, as amended by the Act of August 14, 1946 (60 Stat. 1080), authorized the establishment of Arthur R. Marshall Loxahatchee NWR. The refuge was created by two agreements entered into by the Department of the Interior. The first is a general plan with the Florida Game and Fresh Water Fish Commission (now the Florida Fish and Wildlife Conservation Commission), which allowed Water Conservation Area 1 to be used by the Service for the national migratory bird management program. The second is a long-term license from the Central and Southern Florida Flood Control District (now the South Florida Water Management District) that provided for the use of Water Conservation Area 1 by the Service ''as a Wildlife Management Area, to promote the conservation of wildlife, fish, and game, and for other purposes embodying the principles and objective of planned multiple land use.''

According to the Fish and Wildlife Coordination Act, this refuge ''shall be administered by [the Secretary of the Interior] directly or in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon'' (16 U.S.C. 664). The Migratory Bird Conservation Act of 1929 states that its purpose is to be ''an inviolate sanctuary, for any other management purpose, for migratory birds'' (16 U.S.C. 715d).

As stated earlier, the Improvement Act mandates the Service to provide wildlife-dependent recreation on refuges, where appropriate and compatible, and designates six priority public uses of the Refuge System: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The environmental assessment, section 7 consultation, and data analysis did not show that any negative cumulative impacts will occur to the Everglades snail kite under the proposed hunting regulations.

The refuge has completed a compatibility determination and has found the alligator hunt compatible based on the current research and data available. Research shows that the refuge can support a limited alligator hunt without having negative cumulative effects to the alligator population or interfering with other public user groups. See the sport hunting plan's appendix B for the compatibility determination. Please contact the refuge if you would like to obtain a copy of the sport hunting plan. Also, the refuge consulted under section 7 of the ESA and found the hunt is not likely to adversely affect any listed,

proposed, or candidate species, or any designated or proposed critical habitat.

Approximately 21 percent (30,000 acres) of the refuge is available for hunting during the season, leaving up to 79 percent of the refuge for alligators and other species to forage and rest (sanctuary area) depending on environmental conditions.

Nesting populations of Everglades snail kite, wood storks, and other listed species would not be significantly disturbed as a result of the action alternative. Snail kites do not frequent nor nest during the dates for the alligator season (August through November). However, depending on the year, water levels may be optimal earlier or later for both wintering and nesting snail kites and may fall within the time frame for the hunt seasons. It is unlikely that the snail kites will be affected, though, because of the low density of snail kites on the refuge, the actual number of hunt dates available, and the location of the hunt area versus past nest locations. See the refuge's 2012 Sport Hunting Plan for specific refuge hunt days, which are more restrictive than the State seasons.

To minimize potential impacts to snail kites, recreational hunting activities within the refuge will take measures to avoid active snail kite nest sites. If the snail kite nests are active during the hunt seasons, the refuge will coordinate restrictions and necessary communications with Florida Fish and Wildlife Conservation Commission staff and hunters, and ''Area Closed'' signs will be placed to show the buffer zones whether along levees or within the marsh. Prior to the hunts, the refuge will provide hunters with maps, GPS points, and specific rules and regulations regarding the restrictions within the snail kite nest buffer zones. We made no changes to the rule as a result of this comment.

Comment 9: A commenter believed there should not be alligator hunting at Arthur R. Marshall Loxahatchee NWR because the refuge is understaffed and will not be able to properly monitor hunters.

Response 9: This hunt will not take many staff resources, and the Florida Fish and Wildlife Conservation Commission will be implementing the drawing and licensing of the hunt. Refuge law enforcement officers and officers from the Florida Fish and Wildlife Conservation Commission will be enforcing the hunts with random checks in the field; otherwise, it will be a self-check. Check stations will be established only if needed during hunting harvest periods to ensure hunters are using permits correctly and proper hunting methods are being enforced. We made no changes to the rule as a result of this comment.

Comment 10: Numerous commenters felt alligator hunting should not be allowed on Arthur R. Marshall Loxahatchee NWR because it conflicts with other public uses, is dangerous for visitors, and disturbs wildlife.

Response 10: The Improvement Act mandates the Service to provide wildlife-dependent recreation on refuges, where appropriate and compatible, and designates six priority public uses of the Refuge System: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Therefore, hunting is one of the six priority public uses accepted on all refuges, as long as the proposed activity is appropriate and compatible with the establishing legislation of the refuge. The environmental assessment, section 7 consultation, and data analysis did not show that any negative cumulative impacts will occur to alligators under the proposed hunting regulations.

The refuge has completed a compatibility determination and has found the alligator hunt compatible based on the current research and data available. Please contact the refuge if you would like to obtain a copy of the sport hunting plan, which contains the completed compatibility determination. Research shows that the refuge can support a limited alligator hunt without having negative cumulative effects to the alligator population or interfering with other public user groups.

The current hunt boundary for alligator hunting will remain the same as the waterfowl hunt boundary except for opening the perimeter canals, and currently access will be allowed only from the Hillsboro boat ramp. There will be a buffer around high use visitor areas where hunting will not be allowed to take place (*i.e.,* public boat ramps). Hunt dates on the refuge for waterfowl, coot, and alligator fall within the State framework; however, actual hunt dates will be fewer, and there will be time limitations for each hunt day. These are refuge-specific regulations, which can be found in the refuge's 2012 Sport Hunting Plan. The alligator hunt will be structured like the Florida Fish and Wildlife Conservation Commission's program used on the Stormwater Treatment Areas, and will take place as follows: 1 hour before sunset on Friday night through 1 hour after sunrise Saturday morning, and 1 hour before sunset on Saturday night through 1 hour after sunrise Sunday morning. Therefore, limited public use interaction will occur between hunters and non-hunters given the timing of the hunt. The alligator hunt should not result in any negative cumulative impacts to the refuge, and given the small number of permits issued, only a negligible increase in hunters will be observed. We made no changes to the rule as a result of this comment.

Comment 11: Numerous commenters felt we should reject the proposal to allow alligator hunting on Arthur R. Marshall Loxahatchee NWR due to ''inhumane'' methods of take. The alligator hunt will allow the use of hand-held snares, harpoons, gigs, snatch hooks, artificial lures, manually operated spears, spear guns, crossbows, and bang sticks (a hand held pole with a pistol or shotgun cartridge at the end). One commenter expanded this thought to state, ''this is horrifically inhumane as it is not uncommon for injured alligators to get loose and suffer for hours before dying.''

Response 11: The methods identified in the rule, to take alligators, are the same legal methods used by the State. Alligators may be taken using hand held snares, harpoons, gigs, snatch hooks, artificial lures, manually operated spears, spear guns, and crossbows. Alligators may not be taken using baited hooks, baited wooden pegs, or firearms. We made no changes to the rule as a result of this comment.

Comment 12: A commenter requested we reject the plan to allow hunting of alligators on Arthur R. Marshall Loxahatchee NWR due to the disturbance and pollution that gas-powered boats would create.

Response 12: The alligator hunt should not result in negative cumulative impacts to the refuge, and given the small number of permits issued, only a negligible increase of hunters will be observed. Airboats will not be allowed during the hunt, and most of the alligator hunting activity will occur in the perimeter canals; therefore, increased habitat damage and pollution from gas-powered boats due to the alligator hunt will not occur. We made no changes to the rule as a result of this comment.

Comment 13: A commenter requested we relocate alligators from Arthur R. Marshall Loxahatchee NWR to Wakulla Springs, where there has been a population decline, before killing them.

Response 13: Alligators are not in decline throughout the State of Florida, or on the refuge. The alligator hunt is strictly recreational, and is not for population control. Wakulla Springs is a State park managed by the State of Florida. If there are local declines in the Wakulla Springs area, it would be up to the State or the Florida Fish and

Wildlife Conservation Commission to decide what to do about the alligator population. Relocating alligators can potentially introduce a different gene pool or diseases to the local alligator population, which may have negative impacts. We made no changes to the rule as a result of this comment.

Comment 14: A commenter felt that alligator hunting at Arthur R. Marshall Loxahatchee NWR should be restricted to adults and not include young or juvenile alligators. The commenter sites a study that found smaller alligators were becoming harder to detect during field research in the greater Everglades.

Response 14: Based on previous comments from the public, revisions to the Sport Hunting Plan were made that would make the size limits consistent with those under Florida Fish and Wildlife Conservation Commission's Statewide alligator harvest program. Additional constraints can complicate participation requirements and may be confusing for participants. Making the hunt consistent with the State will also prevent alligators being caught and discarded or abandoned because they were a few inches short of the legal take. As the proposed regulations did not include any size restrictions, we made no changes to the rule as a result of this comment.

Comment 15: A commenter felt there should be no alligator hunting in Arthur R. Marshall Loxahatchee NWR due to projected, deteriorating hydrological conditions.

Response 15: The Florida Fish and Wildlife Conservation Commission will conduct transect surveys within the hunt boundary of the perimeter canals during the spring in order to determine annual quotas in accordance with their standard procedures. In addition to quota-driven surveys, refuge staff will conduct transect surveys in the spring or fall or both to supplement the surveys conducted by the Florida Fish and Wildlife Conservation Commission and monitor for cumulative effects. Data collected will help managers determine hunt impacts and how many alligators can be sustainably harvested per year. Annual harvest quotas will be determined, in part, using the model Fish and Wildlife Conservation Commission uses to set harvest quotas for all State-run alligator hunts. Refuge management will also incorporate refuge priorities and goals into the development of annual quotas. It is important to note that the goal for the alligator hunt in the refuge is to set annual harvest quotas that provide a high-quality hunt while supporting multiple compatible uses, such as wildlife observation and photography, rather than the maximum sustainable harvest. If annual analysis determines alligator populations have declined beyond acceptable levels, alligator harvest will be suspended until populations have recovered. Acceptable levels of decline will be determined by refuge management in consideration of refuge goals and objectives and the best available science. We made no changes to the rule as a result of this comment.

Comment 16: A commenter suggested we allow the use of electric trolling motors in the Monopoly Lake area of Mingo NWR. They state this change would allow handicapped fisherman more fishing access.

Response 16: Monopoly Marsh is inside the Mingo Wilderness, which is administered as part of the National Wilderness Preservation System. Under the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), no motorized equipment (including trolling motors) is allowed. We made no changes to the rule as a result of this comment.

Comment 17: A commenter felt cooperative farmers, who farm at other refuges located within Willamette Valley, will be negatively impacted if both Ankeny and W.L. Finley NWRs are not opened to waterfowl hunting at the same time as Baskett Slough NWR. The commenter states, ''I believe if you only allow hunting on Baskett Slough our crops will not survive due to the over grazing by the geese pushed to Ankeny Wildlife refuge and Finley Wildlife refuge.'' The commenter felt opening Ankeny and W.L. Finley NWRs will keep migrating geese spread out, reducing the chances of them being infected with a virus.

Response 17: We understand the pressures faced by cooperative farmers on the refuges, but do not believe the hunt will create much change in wintertime distribution of geese, which are the source of the majority of grazing pressure on refuge fields. The hunt would only be open for 6 days in September, well before the arrival of the majority of geese. The September goose hunt would allow harvest only for western Canada geese, which are currently above population objectives in the Pacific Flyway. Baskett Slough NWR has a fairly reliable supply of water at that time of year and a history of Western Canada goose presence in September. Hunting was considered for cackling geese during the winter season but was rejected because of the potential to impact dusky Canada geese and other wintering geese, conflicting with the refuges' purposes. As part of our regular management, we keep an eye on the geese for signs of any diseases, and will take steps if and when overcrowding is deemed a health or safety issue. We made no changes to the rule as a result of this comment.

Comment 18: Several commenters oppose the opening of Baskett Slough NWR to hunting, with the focus of these letters centering on the contradiction they see in allowing hunting on a refuge. One of these writers circulated a petition to oppose hunting at the refuge, gathering over 100 signatures, while another wrote, ''the refuges first and foremost function is to provide a place where wildlife cannot be hunted or harassed by humans.'' A third commenter said that allowing hunting would make a mockery of the protection promise the Service made when originally establishing the refuges.

Response 18: Duck, goose, coot, and snipe hunting was allowed at Baskett Slough NWR between 1969 and 1985. In addition, hunting for pheasant, quail, dove, and pigeon was also allowed in the past. We understand that many people are opposed to hunting within refuges. However, hunting was designated as one of six priority public uses for NWRs under the Administration Act, as amended, in 1997. Though Baskett Slough NWR was established as an ''inviolate sanctuary for migratory birds, or for any other management purpose, for migratory birds,'' on units of the Refuge System established as an ''inviolate sanctuary,'' the Service may allow hunting of migratory game birds on up to 40 percent of that refuge at any one time (some exceptions exist). We estimate that fewer than 100 ducks and geese per year will be harvested at Baskett Slough NWR under the hunt. Dusky Canada geese, the focus species when the refuge was originally established, are not expected to be impacted by the harvest, as they would not yet have arrived on the refuge by September. Dusky Canada geese were addressed in the hunt plan, NEPA documentation and compatibility determination.

We do anticipate some minor disturbance to other foraging or resting birds and other wildlife from dogs, human activity, and the noise associated with hunting. Orientation will be provided to all hunters at the start of each hunt day, which will help to reduce effects to non-target species.

Similarly, there will be disturbance to other refuge users during the hunt, but less than 34 percent of the refuge will be open to hunting, and hunting will occur on only 6 days per year. The high-use public areas at that time of year (viewing areas along Coville Road, trails on Baskett Butte) will remain unaffected, except for some potential for more vehicles to be parked in high-use

areas, and of course the potential for the sight and sound of hunting. We considered this to be a minor effect to the non-hunting users due to the very short season.

The positives are that hunting provides an opportunity, especially for youth, to enjoy a wildlife-dependent use (which is considered a priority for the Refuge System as a whole). We made no changes to the rule as a result of this comment.

Comment 19: Many commenters opined that killing wildlife is not an acceptable use for a refuge. Several commenters expanded on this thought and believe refuges should offer safe haven for wildlife. Finally, many commenters believe that since non-consumptive users highly outnumber consumptive users, they should be given a higher priority when it comes to use of refuge lands. One commenter expanded on this thought by saying the viewing public ''should not be subject to hunting closures and clothing regulations.''

Response 19: The Administration Act, amended by the Improvement Act, stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge and should be facilitated. The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible. In the case of each refuge that is opening or expanding hunting opportunities in this rule, the refuge managers went through the NEPA and compatibility process, which allows for public comment, to make the determination before the opening or expanding. The principal focus of the Improvement Act was to clearly establish a wildlife conservation mission for the Refuge System and provide managers clear direction to make determinations regarding wildlife conservation and public uses within the units of the Refuge System. The Service manages NWRs primarily for wildlife conservation, habitat protection, and biological integrity, and allows uses only when compatible with refuge purposes. In passing the Improvement Act, Congress reaffirmed that the Refuge System was created to conserve fish, wildlife, plants, and their habitats and would facilitate opportunities for Americans to participate in compatible wildlife-dependent recreation, including hunting and fishing on Refuge System lands. The Service has adopted policies and regulations implementing the requirements of the Improvement Act that refuge managers comply with when considering hunting and fishing programs.

Some refuges close other public use programs or enforce clothing regulations during hunting seasons. This is done through refuge-specific regulations specifically for public safety. We made no changes to the rule as a result of these comments.

Comment 20: A commenter felt that allowing hunting on Shawangunk Grasslands NWR would have an adverse effect on the grasslands and several species that use the habitat, due to the increased disturbance from hunters being allowed to leave clearly defined pathways. The commenter also felt it would be unsafe to allow hunting due to the close proximity of new recreation fields in the village of Wallkill, which is located on a small portion of the grasslands.

Response 20: Potential impacts to wildlife and the current visiting public were evaluated as the hunting package was being developed. The hunt is archery-only for deer only, meaning it is limited in scope. Spatially it is limited to forested blocks on the far western boundary of the refuge, the northwest corner of the refuge, and the northeast corner of the refuge. In addition to the forested areas, we included a 50-yard hunt-able buffer extending from the edge of the forested areas into the periphery of the grasslands. (We chose a 50-yard hunt-able area because that is generally regarded as the limit of a kill shot with a bow or crossbow.) The refuge system trail and large, uninterrupted expanses of grassland, where nesting birds and short-eared owls make their homes, lay well away from the hunt-able area of the refuge. The hunt is limited to New York State archery deer hunting seasons. The number of permits issued is also limited. All of these measures limit adverse effects that could be associated with hunting. Hunters will avoid walking in the grassland areas to avoid detection by grazing deer.

Bow-hunting-only hunting zones well away from the trail system, and hunting zones farther still away from our grassland habitat, make this hunt safe in the context of other ongoing uses. It also gives the Service an important management tool to benefit peripheral forest areas, while virtually eliminating impacts to the interior, uninterrupted grasslands. These forested blocks contain numerous invasive plant species, and native understory vegetation is absent. Further, the grassland portion of the refuge has a great potential for supporting rare native plant species; however, although once historically present, these species are now missing from the vegetative community. Overabundance of deer helped eliminate native vegetation in the forest and grassland areas, while favoring nonnative, invasive plants.

The town park that is referenced in the comment has been under construction for a decade. As the park begins to open, we will adjust hunt-able areas, if necessary, to keep safety our top priority. We made no changes to the rule as a result of this comment.

Comment 21: A commenter felt access hours at Nestucca Bay NWR and Siletz NWR should be increased from 1 hour before sunrise to 2 hours before sunrise, to give hunters adequate time to set up for a morning hunt.

Response 21: In response to this comment, we are changing the access hours for both Nestucca Bay NWR and Siletz NWR to 2 hours before sunrise.

Comment 22: A commenter believes the management of predators should be addressed in every comprehensive conservation plan and other appropriate planning documents. The commenter goes on to state, ''Predators, if left unmanaged have an adverse effect on the very wildlife the Federal Refuges are in place to protect.''

Response 22: Management of predators is looked at on a case-by-case basis by the refuge manager. Each refuge manager makes the decision regarding hunting of any species on the refuge only after rigorous examination.

Building on Executive Order 12996 (Management and General Public Use of the National Wildlife Refuge System), the Improvement Act directs the Service to manage for ''biological integrity, diversity, and environmental health.'' Predators are an extremely important component of ecosystems. If deemed appropriate by the refuge manager, predator control may be part of the comprehensive conservation plan or other management plan.

Our policy for managing units of the Refuge System is that we will manage all refuges in accordance with an approved comprehensive conservation plan, which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends.

Comment 23: A commenter requested a public hearing be held to review the effectiveness of the U.S. Fish and

Wildlife Service. In addition, they want the formation of a panel for scientific review.

Response 23: There is nothing in statute that requires a public hearing be held to address public comments on a proposed rule. Public meetings are typically offered during public comment periods for NEPA on refuge Comprehensive Conservation Plan efforts. The U.S. Fish and Wildlife Service (Service) uses the best available science to ensure the health of a population when making the decision to open a refuge to hunting or fishing. The Service has a robust inventory and monitoring program to inform refuge managers of populations and ecosystem health on refuge lands.

Comment 24: A commenter applauded our efforts to open up 6 new refuges to hunting and expand hunting opportunities on 22 others, but stated that they believe all NWRs should become or remain open to hunting.

Response 24: The Improvement Act promotes wildlife-dependent recreation, including hunting and fishing, provided it is compatible with both the Refuge System mission and individual refuge purpose and mission. Conservation, the overarching mission of the National Wildlife Refuge System, is the dominant use on refuge system lands. Each refuge manager gives the decision to allow hunting on a particular refuge rigorous examination. As stated in our response to Comment 2, the decision to allow hunting on a NWR is not a quick or simple process. It is full of deliberation and discussion, including review of all available data to determine the relative health of a population before we allow it to be hunted.

In addition to the comments mentioned above, we received several comments that did not relate to the proposed rule. We are very open to receiving comments on other issues, but we are responding only to those comments directly related to the proposed rule in this document.

Changes from the Proposed Rule

Based on comments we received on the proposed rule, we are removing the prohibition on falconry on Sevilleta NWR and changing the access hours for entry into Nestucca Bay and Siletz Bay NWRs to 2 hours before sunrise. We have also made several nonsubstantive, editorial changes for clarity.

Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day public comment period for the September 24, 2013, proposed rule. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allows activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

Amendments to Existing Regulations

This document adopts in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We cross-reference a number of existing regulations in 50 CFR parts 26, 27, 28, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1—CHANGES FOR 2013–2014 HUNTING/FISHING SEASON

Refuge (region*)	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Aransas NWR (2)	Texas	B	closed	already open	already open.
Arthur R. Marshall Loxahatchee NWR (4).	Florida	already open	closed	B	already open.
Balcones Canyonlands NWR (2)	Texas	C	C	C	closed.
Bandon Marsh NWR (1)	Oregon	C	closed	closed	already open.
Baskett Slough NWR (1)	Oregon	A	closed	closed	closed.
Cherry Valley NWR (5)	Pennsylvania	A	A	A	closed.
Cokeville Meadows NWR (6)	Wyoming	A	A	A	closed.
Colusa NWR (8)	California	C	C	closed	closed.
Cypress Creek NWR (3)	Illinois	C	C	C	already open.
Julia Butler Hansen Refuge For the Columbian White-Tailed Deer (1).	Oregon and Washington	C	closed	already open	already open.
Kootenai NWR (1)	Idaho	already open	D	already open	already open.
Malheur NWR (1)	Oregon	C	already open	already open	C.
Middle Mississippi River NWR (3).	Illinois	C	C	C	already open.
Mingo NWR (3)	Missouri	C	C/D	C	already open.
Neal Smith NWR (3)	Iowa	C/D	C/D	C/D	closed.
Nestucca Bay NWR (1)	Oregon	A	closed	closed	closed.
Northern Tallgrass Prairie NWR (3).	Iowa	C/D	C/D	C/D	closed.
Patoka River NWR and Management Area (3).	Indiana	C	C	C	already open.
Port Louisa NWR (3)	Iowa	C	C	C	C.
Rachel Carson NWR (5)	Maine	C	C/D	C/D	already open.
St. Marks NWR (4)	Florida	C	C	C	already open.
San Andres NWR (2)	New Mexico	closed	closed	D	closed.

TABLE 1—CHANGES FOR 2013–2014 HUNTING/FISHING SEASON—Continued

Refuge (region*)	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Shawangunk Grasslands NWR (5).	New York	closed	closed	A	closed.
Siletz Bay NWR (1)	Oregon	A	closed	closed	closed.
Silvio O. Conte National Fish and Wildlife Refuge (5).	Vermont	C	C	C	closed.
Willapa NWR (1)	Washington	C	already open	C	already open.

Key:
* number in ( ) refers to the Region as explained in the preamble to this rule for additional information regarding refuge-specific regulations.
A = New refuge opened.
B = New activity on a refuge previously open to other activities.
C = Refuge already open to activity, but added new lands/waters or modified areas open to hunting or fishing.
D = Refuge already open to activity but added new species to hunt.

The changes for the 2013–14 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/waterscience/fish/.*

Plain Language Mandate

In this rule, we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule adds 6 NWRs to the list of refuges open to hunting, increases hunting activities on 20 additional NWRs, and increases fishing activities at 2 NWRs. As a result, visitor use for wildlife-dependent recreation on these NWRs will change. If the refuges establishing new programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 19,425 user days (one person per day participating in a recreational opportunity) (Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2013/2014

[Dollars in thousands]

Refuge	Additional days	Additional expenditures
Aransas NWR	2,600	$121.1
Arthur R. Marshall Loxahatchee NWR	11	0.5
Balcones Canyonlands NWR	93	4.3
Bandon Marsh NWR	108	5.0

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2013/2014—Continued

[Dollars in thousands]

Refuge	Additional days	Additional expenditures
Baskett Slough NWR	140	6.5
Cherry Valley NWR	315	14.7
Cokeville Meadows NWR	500	23.3
Colusa NWR	165	7.7
Cypress Creek NWR	0	
Julia Butler Hansen Refuge For the Columbian White-Tailed Deer	0	
Kootenai NWR	0	
Malheur NWR	95	4.4
Middle Mississippi River NWR	11,835	551.2
Mingo NWR	1,500	69.9
Neal Smith NWR	25	1.2
Nestucca Bay NWR	120	5.6
Northern Tallgrass Prairie NWR	10	0.5
Patoka River NWR and Management Area	26	1.2
Port Louisa NWR	0	
Rachel Carson NWR	0	
St. Marks NWR	30	1.4
San Andres NWR	4	0.2
Shawangunk Grasslands NWR	43	2.0
Siletz Bay NWR	100	4.66
Silvio O. Conte National Fish and Wildlife Refuge	875	40.8
Willapa NWR	830	38.7
Total	19,425	904.8

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $904,800 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.27) derived from the report ''Hunting in America: An Economic Force for Conservation'' yields a total economic impact of approximately $2.1 million (2012 dollars) (Southwick Associates, Inc., 2012). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $2.1 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about $411,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, and similar businesses) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around NWRs qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $411,000 to be spent in total in the refuges' local economies. The maximum increase at most would be less than one-tenth of 1 percent for local retail trade spending (Table 3).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2013/2014

[thousands, 2012 dollars]

Refuge/county(ies)	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2011	Establ. with < 10 emp in 2011
Aransas NWR					
Calhoun, TX	$356,827	$60.6	0.017	61	43
Aransas, TX	267,465	60.6	0.023	70	53
Arthur R Marshall Loxahatchee NWR					

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2013/2014—Continued

[thousands, 2012 dollars]

Refuge/county(ies)	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2011	Establ. with < 10 emp in 2011
Palm Beach, FL	21,395,255	0.5	<0.001	5,256	3,961
Balcones Canyonlands NWR					
Burnet, TX	708,176	1.4	<0.001	176	146
Travis, TX	15,369,020	1.4	<0.001	3,454	2,398
Williamson, TX	10,982,412	1.4	<0.001	1,237	812
Bandon Marsh NWR					
Coos, OR	792,881	5.0	0.001	268	191
Baskett Slough NWR					
Polk, OR	415,314	6.5	0.002	135	102
Cherry Valley NWR					
Monroe, PA	2,231,111	7.3	<0.001	631	422
Northampton, PA	3,770,434	7.3	<0.001	876	608
Cokeville Meadows NWR					
Lincoln, WY	245,506	23.3	0.009	79	62
Colusa NWR					
Colusa, CA	230,924	7.7	0.003	60	40
Malheur NWR					
Harney, OR	96,975	4.4	0.005	28	20
Middle Mississippi River NWR					
Randolph, IL	367,968	137.8	0.037	105	68
Jackson, IL	757,506	137.8	0.018	225	141
Jefferson, IN	628,548	137.8	0.022	182	132
Monroe, IL	449,266	137.8	0.031	95	65
Mingo NWR					
Stoddard, MO	482,886	34.9	0.007	120	84
Wayne, MO	72,844	34.9	0.048	37	29
Neal Smith NWR					
Jasper, IA	303,361	1	<0.001	116	80
Nestucca Bay NWR					
Tillamook, OR	249,040	5.6	0.002	107	89
Northern Tallgrass Prairie NWR					
Jasper, IA	303,361	0.5	<0.001	116	80
Patoka River NWR					
Gibson, IN	490,105	1.2	<0.001	122	84
Pike, IN	61,937	1.2	0.002	31	22
St. Marks NWR					
Wakulla, FL	185,694	0.5	<0.001	59	46
Jefferson, FL	98,234	0.5	<0.001	47	35
Taylor, FL	229,296	0.5	<0.001	96	75
San Andres NWR					
Dona Ana, NM	2,132,201	0.2	<0.001	510	341
Shawangunk Grasslands NWR					
Ulster, NY	2,481,614	2.0	<0.001	733	548
Siletz Bay NWR					
Lincoln, OR	619,646	4.66	0.001	310	247
Silvio O. Conte National Fish and Wildlife Refuge					
Essex, VT	16,644	20.4	0.122	20	16
Windham, VT	731,645	20.4	0.003	289	217
Willapa NWR					
Pacific, WA	126,764	38.7	0.030	87	77

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of $100 million or more. The minimal impact will be scattered across the country and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers;

individual industries; Federal, State, or local government agencies; or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs will occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost will be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.–based enterprises to compete with foreign–based enterprises. This rule represents only a small proportion of recreational spending at NWRs. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule affects only visitors at NWRs and describes what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule clarifies established regulations and results in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule adds 6 national wildlife refuges to the list of areas open for hunting and/or sport fishing, adds new hunts at 6 refuges, increases the hunting activities available at 20 other refuges, and increases fishing opportunities at 2 refuges, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on NWRs with Tribal governments having adjoining or overlapping jurisdiction before we propose regulations.

Paperwork Reduction Act

This rule does not contain any information collection requirements other than those already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018–0102 and 1018–0140). In this rule, we revise 50 CFR 25.23 to provide correct information concerning OMB approval for the collections of information contained in subchapter C of title 50 of the Code of Federal Regulations. 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of amendments to refuge-specific hunting and fishing regulations since they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and

Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone 612–713–5360.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

Paul Steblein, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and Recordkeeping Requirements, Safety, Wildlife refuges

50 CFR Part 32

Fishing, Hunting, Reporting, and Recordkeeping requirements, Wildlife, Wildlife refuges.

Regulation Promulgation

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 et seq.; and Pub. L. 102–402, 106 Stat. 1961.

■ 2. Revise § 25.23 to read as follows:

§ 25.23 What are the general regulations and information collection requirements?

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 26, 27, 29, 30, 31, 32, and 36 under 44 U.S.C. 3501 et seq. and assigned the following control numbers: 1018–0102 for National Wildlife Refuge Special Use Permit Applications and Reports; 1018–0140 for Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges; and 1018–0153 for National Wildlife Refuge Visitor Check-In Permit and Use Report. We collect information to assist us in administering our programs in accordance with statutory authorities that require that recreational or other uses be compatible with the primary purposes for which the areas were established. Send comments on any aspect of these forms or the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 2042–PDM, Washington, DC 20240.

PART 32—[AMENDED]

■ 3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

[Amended § 32.7]

■ 4. Amend § 32.7 by:

■ a. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Connecticut;

■ b. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Massachusetts;

■ c. Adding an entry for ''Shawangunk Grasslands National Wildlife Refuge'' and placing it in alphabetical order in the State of New York;

■ d. Adding an entry for ''Baskett Slough National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ e. Adding an entry for ''Nestucca Bay National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ f. Adding an entry for ''Siletz Bay National Wildlife Refuge'' and placing it in alphabetical order in the State of Oregon;

■ g. Adding an entry for ''Cherry Valley National Wildlife Refuge'' and placing it in alphabetical order in the State of Pennsylvania;

■ h. Adding an entry for ''Silvio O. Conte National Fish and Wildlife Refuge'' and placing it in alphabetical order in the State of Vermont; and

■ i. Adding an entry for ''Cokeville Meadows National Wildlife Refuge'' and placing it in alphabetical order in the State of Wyoming.

■ 5. Amend § 32.20 by:

■ a. Revising paragraphs B.1, B.2, B.3, B.4, B.5, B.6, B.7, C.1, C.3, C.4, C.5, and D.1; adding paragraphs B.8 and B.9; and removing paragraphs C.6, C.7, C.8, and D.2 under Cahaba River National Wildlife Refuge.

■ b. Revising paragraphs B.5, B.6, B.8, B.9, B.10, C.1, C.2, C.3, C.4, D.1, D.2, and D.8 and adding paragraph C.6 under Choctaw National Wildlife Refuge.

■ c. Revising paragraphs B.1, B.4, and C.1 under Eufaula National Wildlife Refuge.

■ d. Revising paragraphs A.1, A.4, A.5, and B.1 and adding paragraphs A.6, A.7, and B.3 under Key Cave National Wildlife Refuge.

■ e. Revising paragraphs A.1, A.2, A.3, A.4, B.1, B.2, B.3, C.1, and C.4 and adding paragraphs A.5, A.6, A.7, B.4, and B.5 under Mountain Longleaf National Wildlife Refuge.

■ f. Revising paragraph B under Sauta Cave National Wildlife Refuge.

■ g. Revising paragraphs B.1, B.2, B.4, B.7, B.10, C.1, C.2, C.3, C.4, C.5, and C.7; removing paragraphs C.8 and C.9; and adding paragraphs B.11, B.12, and B.13 under Wheeler National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.20 Alabama.

* * * * *

Cahaba River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources'

William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit conditions.

2. We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural Resources' William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit when hunting on the refuge.

3. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

4. We prohibit the use of horses, mules, and all-terrain vehicles (ATVs) on the refuge.

5. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State and Federal regulations.

6. We prohibit hunting or discharging firearms (including muzzle loaders) from within 50 yards (45 meters) of River Trace Road.

7. Hunting dogs may be used to hunt upland game and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

8. Hunters may only hunt designated game species during specified days, which are published within the Cahaba River National Wildlife Refuge Hunting dates portion of the permit.

9. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

C. Big Game Hunting. * * *

1. Conditions B1, B2, B4, B6, and B8 through B10 apply.

* * * * *

3. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

4. All youth hunters under age 16 must be supervised by a properly licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

5. Hunters may not hunt by aid of or participate in drives to take deer or feral hogs.

D. Sport Fishing. * * *

1. Condition B4 applies.

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

5. All persons 15 years of age or younger, while hunting on the refuge, must be in the presence and under direct supervision of a licensed or exempt hunter at least 21 years of age. A licensed hunter supervising a youth as provided in this section must hold a valid State license for the species being hunted. One adult may supervise no more than one youth hunter.

6. The refuge is open every day from 1 hour before sunrise to 1 hour after sunset, except authorized uses. Personal property must be removed from the refuge daily (see § 27.93 of this chapter).

* * * * *

8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32). Persons may only use approved nontoxic shot in shotgun shells (see § 32.2(k)), .22 caliber rimfire or smaller rifles, or legal archery equipment according to State regulations. We prohibit magnum ammunition.

9. We prohibit equestrian use and all forms of motorized off-road vehicles.

10. We allow hunting of designated species with dogs during designated hunts.

* * * * *

C. Big Game Hunting. * * *

1. Conditions B1 through B9 and B11 apply.

2. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). While climbing a tree, installing a tree stand that uses climbing aids, or while hunting from a tree stand on the refuge, hunters must use a fall-arrest system (full body harness) that is manufactured to Treestand Manufactures Associations standards.

3. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (see § 32.2(i)). Personal property must be removed from the refuge each day except for one portable stand (including tripods and ground blinds) (see § 27.93 of this chapter). The stand is required to be tagged with the hunter's name, address, and phone number permanently and legibly written on or attached to the stand. Stands left on the area do not reserve hunting locations. Portable stands may not be installed on the area prior to 7 days before deer season opens, nor left longer than 7 days after deer season closes. Stands not in compliance with these regulations may be confiscated and disposed of by the U.S. Fish and Wildlife Service.

4. Hunters may not hunt by aid of or harassment of game for purposes of take of deer or feral hogs.

* * * * *

6. Hunter orange is required according to State regulations during gun deer season in Choctaw County, AL. We recommend all user groups wear hunter orange during hunting seasons.

D. Sport Fishing. * * *

1. We allow fishing year-round, except in the waterfowl sanctuary, which is closed from November 15 through March 1.

2. Conditions B2 and B6 apply.

* * * * *

8. We prohibit fishing tournaments on all refuge waters.

Eufaula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1, A2, A3, and A7 through A15 apply.

* * * * *

4. We only allow shotguns as the means of take for upland game hunting.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A7 through A15, and B5 apply.

* * * * *

Key Cave National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require hunters to possess and carry a current and signed Key Cave National Wildlife Refuge permit, which is included with the Alabama Department of Conservation and Natural Resources' Seven Mile Island Wildlife Management Area hunting permit when hunting on the refuge.

* * * * *

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

5. We allow hunters to use hunting dogs to hunt migratory game birds and upland game. The dogs must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

6. Hunters may only hunt designated game species during specified days, which are published within the Key Cave National Wildlife Refuge Hunting Dates portion of the permit.

7. We prohibit the use of horses, mules, or all-terrain vehicles (ATVs) on all refuge hunts.

B. Upland Game Hunting. * * *

1. Conditions A1 and A3 through A7 apply.

3. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller

(see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations. Possession of lead shot shells for hunting is prohibited.

* * * * *

Mountain Longleaf National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources' Choccolocco Wildlife Management Area hunting permit conditions.

2. We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural Resources' Choccolocco Wildlife Management Area hunting permit when hunting on the refuge.

3. All youth hunters under age 16 must be supervised by a properly licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

4. We prohibit the use of horses, mules, and all-terrain vehicles (ATVs) on the refuge.

5. Hunters may only hunt designated game species during specified days, which are published within the Mountain Longleaf National Wildlife Refuge Hunting Dates portion of the permit.

6. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

7. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)). Possession of lead shot shells for hunting is prohibited.

B. Upland Game Hunting. * * *

1. Conditions A1 through A7 apply.

2. Hunters may hunt during daylight hours only.

3. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

4. Hunting dogs may be used to hunt quail, squirrel, and rabbit and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

5. Possession of lead shot shells for hunting is prohibited.

C. Big Game Hunting. * * *

1. Conditions A1, A2, and A4 through A7 apply.

* * * * *

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

* * * * *

Sauta Cave National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated area of the refuge in accordance with Federal and State regulations subject to the following conditions:

1. We require hunters to hunt in accordance with Alabama Department of Conservation and Natural Resources' North Sauta refuge hunting permit.

2. We require hunters to possess and carry a current and signed Sauta Cave National Wildlife Refuge permit, which is found on the Alabama Department of Conservation and Natural Resources' Jackson County Waterfowl, Management Areas, refuges and Coon Gulf Tract hunting permit, when hunting.

3. Hunters may only hunt designated game species during specified days, which are published within the Sauta Cave National Wildlife Refuge Hunting Dates portion of the permit.

4. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations. Possession of lead shot shells for hunting is prohibited.

5. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

6. We allow hunters to use hunting dogs to hunt upland game. The dogs must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

* * * * *

Wheeler National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We require hunters to possess and carry a current and signed hunting permit, found on the Wheeler National Wildlife Refuge Hunting Brochure, when hunting on the refuge. These brochures are available at the refuge visitor center, refuge headquarters, and on the refuge's Web site.

2. Hunters may hunt with shotguns using only nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

* * * * *

4. We prohibit hunting or discharging firearms (including Flintlocks) in the Triana recreation area or from any road or road shoulder or from within 50 yards (45 meters) of any designated walking trail or boardwalk.

* * * * *

7. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than two youth hunters.

* * * * *

10. Hunting dogs may be used to hunt upland game and must be controlled by the owner/handler at all times (see § 26.21(b) of this chapter).

11. We allow hunters to hunt from tree stands in accordance with 50 CFR 32.2(i). Hunters must use a body safety harness at all times while hunting from a tree.

12. Hunters must remove tree stands, blinds, or other personal property from the refuge each day (see § 27.93 of this chapter).

13. Hunters may only hunt designated game species during specified days, which are published within the Wheeler National Wildlife Refuge Hunting Brochure.

C. Big Game Hunting. * * *

1. Conditions B1, B3 through B6, B8, B9, and B11 through B13 apply.

2. Hunters may not hunt by aid of or harassment of game for purposes of take for deer or feral hogs.

3. Hunters may only hunt with archery equipment that complies with State regulations and flintlocks .40 caliber or larger.

4. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. One adult may supervise no more than one youth hunter.

5. Hunters must report the sex, approximate size, and hunt area for any deer or hogs they harvested from the refuge within 72 hours. Reports must be given by phone or in person to the refuge Visitor Center (256/350–6639) or refuge headquarters (256/353–7243).

* * * * *

7. You may only hunt feral hog during the refuge archery and flintlock deer season.

* * * * *

■ 6. Amend § 32.24 by:

■ a. Revising paragraphs A.3, A.4, A.5, A.6, A.7, A.8, and B.1; adding paragraph A.9; and removing paragraph B.2 under Colusa National Wildlife Refuge.

■ b. Revising paragraphs A.4, A.10, A.11, and B.2; and removing paragraphs

B.3, B.4, B.5, B.6, B.7, and B.8 under Delevan National Wildlife Refuge.

■ c. Revising paragraphs A.6, A.10, A.11, and B.2; and removing paragraphs B.3, B.4, B.5, B.6, B.7, and B.8 under Sacramento National Wildlife Refuge.

■ d. Revising paragraphs A.3, A.4, A.5, A.6, A.7, A.8, and B.1; adding paragraph A.9; and removing paragraphs B.2, B.3, B.4, B.5, B.6, and B.7 under Sutter National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters must consult the refuge manager for allowed conveyances.

4. We allow boats with electric motors to be used by hunters with disabilities only in designated areas.

5. No person may build or maintain fires. Portable gas stoves are permissible.

6. You may enter or exit only at designated locations.

7. Vehicles may stop only at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

8. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

9. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

1. Conditions A1 through A9 apply.

* * * * *

Delevan National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters should consult the refuge manager for allowed conveyances.

* * * * *

10. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

11. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

2. Conditions A4 through A11 apply.

* * * * *

Sacramento National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

6. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters must consult the refuge manager for allowed conveyances.

* * * * *

10. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

11. We require dogs be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

2. Conditions A4 through A11 apply.

* * * * *

Sutter National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not allowed. Mobility-impaired hunters should consult the refuge manager for allowed conveyances.

4. Boats with electric motors allowed only by hunters with disabilities in designated areas.

5. No person may build or maintain fires. Portable gas stoves are permissible.

6. You may enter or exit only at designated locations.

7. Vehicles may only stop at designated parking areas. We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

8. Overnight stays, using passenger vehicles, motor homes, and trailers, are allowed only at the check station parking areas. Tents are prohibited.

9. Dogs must be kept on a leash, except for hunting dogs engaged in authorized hunting activities and under the immediate control of a licensed hunter.

B. Upland Game Hunting. * * *

1. Conditions A1 through A9 apply.

* * * * *

■ 7. Amend § 32.25 by revising the introductory text in paragraphs A and B and by adding paragraphs A.6, B.4, D.4, and D.5 under Arapaho National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

Arapaho National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, merganser, Canada goose, snipe, Virginia and Sora rail, and mourning dove on designated areas of the refuge in accordance with State and Federal regulations, subject to the following conditions:

* * * * *

6. Legal method of take for migratory game birds is by shotgun only.

B. Upland Game Hunting. We allow hunting of jackrabbit, cottontail rabbit, and sage grouse on designated areas of the refuge in accordance with State regulations, subject to the following conditions:

* * * * *

4. Legal method of take for upland game is by shotgun only.

* * * * *

D. Sport Fishing. * * *

4. Fishing is closed in Unit C when the refuge is open to big game rifle hunting.

5. Lead sinkers and live bait are not allowed for fishing.

* * * * *

■ 8. Amend § 32.26 by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.26 Connecticut.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 9. Amend § 32.28 by:

■ a. Revising the introductory text in paragraphs A and D; revising paragraph A.2; removing paragraph A.4; redesignating A.5, A.6, A.7, A.8, A.9, A.10, A.11, A.12, A.13, A.14, A.15, A.16, A.17 and A.18 as paragraphs A.4, A.5, A.6, A.7, A.8, A.9, A.10, A.11, A.12, A.13, A.14, A.15, A.16 and A.17; revising newly designated paragraphs A.7 and A.12; and adding a new paragraph C under Arthur R. Marshall Loxahatchee National Wildlife Refuge.

■ b. Revising paragraphs D.4, D.5, and D.7; redesignating paragraphs D.8, D.9, D.10, D.11, D.12, D.13, D.14, D.15, D.16, D.17, D.18, D.19, and D.20 as paragraphs D.9, D.10, D.11, D.12, D.13, D.14, D.15, D.16, D.17, D.18, D.19, D.20, and D.21, respectively; revising newly designated

paragraphs D.13 and D.21; and adding paragraph D.8 under J.N. ''Ding'' Darling National Wildlife Refuge.

■ c. Revising paragraphs A.3, B.1, C.4, C.8, and C.9 and adding paragraphs B.12 and C.12 under St. Marks National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck and coot on designated areas of the refuge in accordance with State and Federal regulations subject to the following conditions:

* * * * *

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14 (SEE PERMIT MAP). We prohibit hunting from canals or levees and those areas posted as closed.

* * * * *

7. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

* * * * *

12. All youth hunters under age 16 must be supervised by a licensed and permitted adult 21 years of age or older, and must remain with the adult while hunting. Youth hunters must have completed a hunter education course.

* * * * *

C. Big Game Hunting. We allow hunting of alligators on designated areas of the refuge in accordance with Federal and State regulations and subject to the following conditions:

1. You must possess and carry a signed refuge alligator hunt permit (signed brochure) while hunting. These brochures are available at the refuge visitor center and on the refuge's Web site (*http://www.fws.gov/loxahatchee/*).

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14, including the canals south of that line (SEE PERMIT MAP). We prohibit hunting from levees and those areas posted as closed.

3. Consult the refuge manager for current alligator hunt season dates and times.

4. We allow hunting on the refuge 1 hour before sunset on Friday night through 1 hour after sunrise Saturday morning, and 1 hour before sunset on Saturday night through 1 hour after sunrise Sunday morning. Alligator hunting will be permitted the first 2 weekends during Harvest Period 1 (August) and the first 2 weekends during Harvest Period 2 (September). Following the close of Harvest Period 2, the remaining weekends in October will be open for alligator harvest permittees who possess unused CITES tags. Specific dates for the alligator hunt will be provided on the harvest permit.

5. Hunters 18 years and older must be in possession of all necessary State and Federal licenses, permits, and CITES tags, as well as a refuge hunt permit (signed hunt brochure) while hunting on the refuge. They must possess an Alligator Trapping License with CITES tags or an Alligator Trapping Agent License, if applicable.

6. Hunters under the age of 18 may not hunt, but may only accompany an adult of at least 21 years of age who possesses an Alligator Trapping Agent License.

7. Hunters may only enter and leave the refuge at the Hillsboro Area (Loxahatchee Road, Boca Raton).

8. Alligators may be taken using hand-held snares, harpoons, gigs, snatch hooks, artificial lures, manually operated spears, spear guns, and crossbows. Alligators may not be taken using baited hooks, baited wooden pegs, or firearms. Bang sticks (a hand held pole with a pistol or shotgun cartridge on the end in a very short barrel) with non-toxic ammunition are only allowed for taking alligators attached to a restraining line. Once an alligator is captured, it must be killed immediately. Once the alligator is taken or harvested, a CITES tag must be locked through the skin of the carcass within 6 inches of the tip of the tail. The tag must remain attached to the alligator at all times.

9. Hunters must complete a Big Game Harvest Report (FWS Form 3–2359) and place it in an entrance fee canister each day prior to exiting the refuge. A State Alligator Report form required by the State along with the hunt permit (signed refuge brochure) must be submitted to the refuge within 24 hours of taking each alligator.

10. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

11. Hunters must remove all personal property (see § 27.93 of this chapter) from the hunting area each day.

12. Conditions A13 through A17 apply.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with Federal and State regulations and subject to the following conditions:

* * * * *

J.N. ''Ding'' Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

4. We allow the take of blue crabs with the use of dip nets only.

5. The daily limit of blue crabs is 20 per person (including no more than 10 non-eggbearing females).

* * * * *

7. We allow vessels propelled only by polling, paddling, or floating in the posted ''no-motor zone'' of the J.N. ''Ding'' Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the ''no-motor zone.''

8. We allow vessels propelled only by polling, paddling, floating, or electric motors in the posted ''pole/troll zone'' of the Wulfert Flats Management Area. All non-electric motors must be in a non-use position (out of the water) when in the ''pole/troll zone.''

* * * * *

13. We prohibit all public entry into the impoundments on the left side of Wildlife Drive.

* * * * *

21. We close to public entry all refuge islands (including rookery islands) except for designated trails.

* * * * *

St. Marks National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

3. We prohibit migratory game bird hunting in the Executive Closure Areas on the refuge.

* * * * *

B. Upland Game Hunting. * * *

1. We require refuge permits (signed brochure) for hunting upland game. Permits are available at no cost from the refuge office or can be downloaded and printed from the refuge Web site. Each hunter must possess and carry a signed refuge permit while participating in a hunt.

* * * * *

12. Portions of the refuge adjacent to Flint Rock Wildlife Management Area (as specified in the hunt brochure) will be open concurrent with Flint Rock Wildlife Management Area seasons and regulations except only feral hog, grey squirrel, rabbit, and raccoon may be harvested.

C. Big Game Hunting. * * *

4. There is a two deer limit per hunt as specified in condition C8 below, except in the youth hunt where the limit is as specified in C9 below. The limit for turkey is one per hunt. There is no limit on feral hog.

* * * * *

8. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt period. We define antlerless deer per State regulations (i.e., un-antlered deer or antlered deer with both antlers less than 5 inches in length). Otherwise, hunters may harvest one antlerless deer and one antlered deer per hunt. Hunters must ensure that antlered deer must have at least 3 points, of 1 inch (2.5 centimeters) or more length.

9. There is one youth hunt, for youth ages 12 to 17, on the St. Marks Unit in an area we will specify in the refuge hunt brochure. Hunters may harvest two deer, either two un-antlered deer as defined in C8 or one un-antlered deer and one antlered deer. An adult age 21 or older acting as a mentor must accompany each youth hunter. One youth turkey hunt will be conducted in a similar manner. The limit will be one gobbler per hunter. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

* * * * *

12. Portions of the refuge adjacent to Flint Rock Wildlife Management Area (as specified in the hunt brochure) will be open concurrent with Flint Rock Wildlife Management Area seasons and regulations except only white-tailed deer, feral hog, and turkey may be harvested. We require a refuge permit (signed brochure).

* * * * *

■ 10. Amend § 32.29 by revising paragraph A.3 under Savannah National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Savannah National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

3. We prohibit hunting on or within 100 yards (90 meters) of U.S. Highway 17, GA Highway 25/SC Highway 170, refuge facilities, road, trails, and railroad rights-of-way, and within areas marked as closed.

* * * * *

■ 11. Amend § 32.31 by revising the introductory text in paragraph A and by revising paragraphs A.3, B, C, and D under Kootenai National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Kootenai National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on designated areas (designated area changed due to increased size of safety zone) of the refuge in accordance with State and Federal regulations subject to the following conditions:

* * * * *

3. We prohibit the discharge of firearms in the posted retrieving/safety zone.

* * * * *

B. Upland Game Hunting. We allow hunting of forest grouse and wild turkey on that portion of the refuge that lies west of Lion's Den Road in accordance with State regulations subject to the following condition: You may possess only approved nontoxic shotshells (see § 32.2(k)) while in the field.

C. Big Game Hunting. We allow hunting of deer, elk, black bear, moose, and mountain lion on that portion of the refuge that lies west of Lion's Den Road and hunting of deer at an ADA-accessible blind near Aspen Slough in accordance with State regulations and subject to the following conditions:

1. We prohibit all use of dogs for hunting of big game.

2. You may only participate in deer hunting at the ADA-accessible blind with valid State licenses and tags.

3. You may only participate in deer hunting at the ADA-accessible blind with a refuge permit issued through a random drawing for up to four 7-day archery-only permits and up to six 7-day archery/special weapons-only permits.

4. We only allow deer hunting at the ADA-accessible blind using the following weapons: Muzzleloader, archery equipment, crossbow, shotgun using slugs, or handgun using straight-walled cartridges not originally established for rifles.

5. We prohibit use of toxic (lead) ammunition when deer hunting at the ADA-accessible blind.

D. Sport Fishing. We allow sport fishing on Myrtle Creek in accordance with State regulations subject to the following condition: We allow bank fishing only.

* * * * *

■ 12. Amend § 32.32 by:

■ a. Removing paragraphs A.1 and A.7; redesignating paragraphs A.2, A.3, A.4, A.5, and A.6 as paragraphs A.1, A.2, A.3, A.4, and A.5, respectively; revising newly designated paragraph A.1; revising paragraphs B.1, C.1, and D.1; and adding paragraphs B.3, C.2, and C.3 under Cypress Creek National Wildlife Refuge.

■ b. Revising introductory text in paragraph A; revising paragraphs A.2, B, C.1, C.2, and C.3; and adding paragraphs A.3, C.4, C.5, and C.6 under Middle Mississippi River National Wildlife Refuge.

■ c. Revising paragraph B and adding paragraph C.3 under Two Rivers National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.32 Illinois.

* * * * *

Cypress Creek National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1, A2, A4, and A5 apply.

* * * * *

3. We allow the use of .22 and .17 caliber rimfire lead ammunition for the taking of small game and furbearers during open season.

C. Big Game Hunting. * * *

1. Conditions A1, A2, A4, and A5 apply.

2. We prohibit deer drives, by person or animal, and participating in deer drives on all refuge divisions.

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

D. Sport Fishing. * * *

1. Conditions A1 and A3 apply.

* * * * *

Middle Mississippi River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on the Meissner, Wilkinson, and Beaver Island Divisions in accordance with State regulations and subject to the following conditions:

* * * * *

2. You must remove boats, blinds, blind materials, stands, decoys, and other hunting equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

3. We allow portable blinds on a daily basis on a first-come, first-served basis.

B. Upland Game Hunting. We allow hunting of upland game (squirrels,

rabbits, and bobwhite quail only) on the refuge in accordance with State regulations and subject to the following conditions:

1. We allow hunting of furbearers only from legal sunrise to legal sunset.

2. You may only use or possess approved nontoxic shot shells while in the field (see § 32.2(k)).

C. Big Game Hunting. * * *

1. Conditions A1 and A2 apply.

2. In the Harlow, Crains, and Meissner Island Divisions you may use only archery equipment to harvest white-tailed deer.

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

4. We prohibit deer drives, by person or animal, and participating in deer drives on all refuge divisions.

5. We prohibit placing temporary tree stands in dead or dying trees.

6. You may not remove any tree or limbs greater than 1 inch in diameter.

* * * * *

Two Rivers National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow upland game hunting only on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations and subject to the following conditions:

1. We allow hunting from legal sunrise to legal sunset.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. * * *

3. Condition B2 applies.

* * * * *

■ 13. Amend § 32.33 by:

■ a. Revising paragraphs C.4, C.8, and C.9 and adding paragraphs C.10, C.11, and D.7 under Muscatatuck National Wildlife Refuge.

■ b. Revising A.2, C.2, C.3, D.2.iv, and D.3 and adding paragraphs A.7, A.8, and B.3 under Patoka River National Wildlife Refuge and Management Area.

These additions and revisions read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

4. You may take only two deer per day from the refuge, only one of which may be an antlered buck.

* * * * *

8. We permit archery deer hunting in designated areas after National Wildlife Refuge Week during the State season with the exceptions that archery deer hunting is closed during the youth deer hunt in November and during the State muzzleloader season.

9. Turkey hunting ends at 1 p.m. daily.

10. We prohibit the use or possession of game trail cameras on the refuge.

11. We require you to remove arrows from crossbows during transport in a vehicle.

D. Sport Fishing. * * *

7. We allow only children under 18 years of age to fish in the Office Pond.

* * * * *

Patoka River National Wildlife Refuge and Management Area

A. Migratory Game Bird Hunting. * * *

2. You must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

* * * * *

7. We prohibit hunting and the discharge of a weapon within 150 yards of any dwelling or any building that may be occupied by people, pets, or livestock.

8. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

B. Upland Game Hunting. * * *

3. Conditions A7 and A8 apply.

C. Big Game Hunting. * * *

2. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

3. Conditions A6 through A8 apply.

D. Sport Fishing. * * *

2. * * *

iv. You may not collect or harvest minnows, crayfish, or any reptiles and amphibians (see § 27.21 of this chapter).

3. You must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

* * * * *

■ 14. Amend § 32.34 by:

■ a. Revising paragraphs A, B, C.1, and C.2 and removing paragraph C.3 under Neal Smith National Wildlife Refuge.

■ b. Redesignating paragraphs A.1, A.2, A.3, A.4, A.5, A.6, A.7, and A.8 as paragraphs A.2, A.3, A.4, A.5, A.6, A.7, A.8, and A.9, respectively; redesignating paragraphs B.1, B.2, B.3, and B.4 as paragraphs B.2, B.3, B.4, and B.5, respectively; redesignating paragraphs C.1, C.2, and C.3 as paragraphs C.2, C.3, and C.4, respectively; revising the introductory text in paragraphs A, B, and C; revising newly designated paragraphs B.5 and C.4; and adding paragraphs A.1, B.1, and C.1 under Northern Tallgrass Prairie National Wildlife Refuge.

■ c. Revising the entry for Port Louisa National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.34 Iowa.

* * * * *

Neal Smith National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow the hunting of duck, goose, and coot on designated areas of the refuge in accordance with State and Federal regulations and subject to the following conditions:

1. We prohibit all hunting February 1 through August 31 due to conflict with existing appropriate and compatible uses.

2. You may only possess approved nontoxic shot (see § 32.2(k)) while hunting for any allowed bird, including waterfowl and wild turkey, or other upland or small game.

3. We allow entry into the refuge 1 hour before sunrise and require hunters to leave the refuge no later than 1 hour after sunset.

4. We prohibit shooting on or over any refuge road within 50 feet (15 meters) from the centerline.

5. You must possess and carry a refuge permit (free brochure available at the refuge visitor center).

6. We allow the use of dogs for waterfowl, pheasant, and quail hunting only.

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, bobwhite quail, pigeon, mourning dove, crow, cottontail rabbit, gray and fox squirrel, and fall wild turkey (2 weeks within the season) on designated areas of the refuge in accordance with State regulations subject to the following condition: Conditions A1 to A6 apply.

C. Big Game Hunting. * * *

1. Conditions A1 and A3 to A5 apply.

2. We allow the use of portable stands and blinds for hunting, and hunters must remove them at the end of each day (see § 27.93 of this chapter).

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, coot, rail (Virginia and Sora only), woodcock, and snipe on designated areas in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge,

you must follow the refuge-specific regulations provided in this section of the regulations for Neal Smith National Wildlife Refuge.

* * * * *

B. Upland Game Hunting. We allow the hunting of ring-necked pheasant, bobwhite quail, gray partridge, rabbit (cottontail and jack), squirrel (fox and gray), groundhog, raccoon, opossum, fox (red and gray), coyote, badger, striped skunk, and crow on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this section of the regulations for Neal Smith National Wildlife Refuge.

* * * * *

5. Conditions A8 and A9 apply.

* * * * *

C. Big Game Hunting. We allow the hunting of deer and turkey on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this section of the regulations for Neal Smith National Wildlife Refuge.

* * * * *

4. Conditions A6, A8, and A9 apply.

* * * * *

Port Louisa National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, teal, brant, merganser, coot, sora and Virginia rail, dove, woodcock and snipe on Iowa River Corridor Project lands in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot while hunting migratory birds (see § 32.2(k)).

2. You must remove boats, decoys, and portable blinds at the end of each day (see § 27.93 of this chapter).

B. Upland Game Hunting. We allow hunting of upland game in accordance with State regulations and subject to the following condition: You may only possess approved nontoxic shot while hunting upland game (see § 32.2(k)); you may use lead shot to hunt turkey.

C. Big Game Hunting. We allow hunting of big game in accordance with State regulations and subject to the following condition: We only allow the use of portable stands and you must remove them at the end of each day (see § 27.93 of this chapter).

D. Sport Fishing. We allow sport fishing on all areas of the refuge in accordance with State regulations and subject to the following condition: You must remove boats and all other fishing devices at the end of each day's fishing.

* * * * *

■ 15. Amend § 32.38 by redesignating paragraphs A.5, A.6, and A.7 as paragraphs A.6, A.7, and A.8, respectively; adding a new paragraph A.5; revising the introductory text in paragraph B; and revising paragraphs A.1, A.4, B.1, B.2, B.3, and C under Rachel Carson National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Rachel Carson National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Prior to entering designated refuge hunting areas, you must obtain a refuge hunting permit (FWS Form 3–2357), pay a recreation fee, and sign and carry the permit at all times.

* * * * *

4. We open Designated Youth Hunting Areas to hunters age 15 and under who possess and carry a refuge hunting permit. Youth hunters must be accompanied by an adult age 18 or older. The accompanying adult must possess and carry a refuge hunting permit and may also hunt.

5. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

B. Upland Game Hunting. We allow hunting of pheasant, quail, and grouse on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Goosefare Brook, and Spurwink River division of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1 and A7 apply.

2. You may take pheasant, quail, and grouse by falconry during State seasons.

3. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Little River, Goosefare Brook, and Spurwink River divisions of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A4, and A7 apply.

2. We allow hunting of deer and turkey with shotgun and archery only. We prohibit rifles and muzzleloading firearms for hunting.

3. We allow turkey hunting during the fall season only, as designated by the State. All State regulations governing the hunting of turkey must be followed.

4. We allow portable tree stands, ladders, and blinds only, and they must be removed daily (see § 27.93 of this chapter). The use of nails, wire, screws or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter is prohibited. You must keep vegetation disturbance (including tree limbs) to a minimum (see § 32.2(i)).

5. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer and turkey hunting.

6. We allow archery on only those areas of the Little River division open to hunting.

7. We allow hunting of fox and coyote with archery or shotgun with a refuge big game permit, during State firearm deer season. You may only possess approved nontoxic shot for hunting (see § 32.2(k)) on the refuge.

* * * * *

■ 16. Amend § 32.39 by removing paragraphs A.9.vi and D.9; redesignating paragraphs D.10, D.11, D.12, D.13, D.14, D.15, and D.16 as paragraphs D.9, D.10, D.11, D.12, D.13, D.14, and D.15, respectively; revising paragraphs A.9.iv, A.9.v, A.13, B.8, C.3.ii, C.6, and C.12; and revising newly designated paragraphs D.14.i and D.15.i under Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Migratory Game Bird Hunting.

* * *

9. * * *

iv. You may hunt from the roadside, except on the Wildlife Loop, at designated areas, if you possess a Maryland Department of Natural Resources issued ''Universal Disability Pass.''

v. You may hunt from the roadside for waterfowl at the five designated hunting blind sites at Lake Allen.

* * * * *

13. We require waterfowl hunters to use trained adult retrieving dogs while hunting duck and goose within 50 yards (45 meters) of the following impounded waters: Blue Heron Pond, Lake Allen, New Marsh, and Wood Duck Pond.

i. We require dogs to be under the immediate control of their owner at all times (see § 26.21(b) of this chapter).

* * * * *

B. Upland Game Hunting. * * *

8. We select turkey hunters by a computerized lottery for youth, disabled, and general public hunts. We require Maryland Department of Natural Resources required documentation to accommodate hunters with disabilities.

* * * * *

C. Big Game Hunting. * * *

3. * * *

ii. We prohibit the discharging of any hunting weapons before or after legal shooting hours, including the unloading of muzzleloaders.

* * * * *

6. We require bow hunters to wear either a cap of solid-fluorescent-orange color at all times or a vest or jacket containing back and front panels of at least 250 square inches (1,625 square centimeters) of solid-fluorescent-orange color when moving to and from their vehicle to their deer stand or their hunting spot and while tracking or dragging out their deer. We do not require bow hunters to wear solid-fluorescent-orange when positioned to hunt except during the North Tract Youth Firearms Deer Hunts, the muzzleloader seasons, and the firearms seasons, when they must wear it at all times.

* * * * *

12. If you wish to track wounded deer beyond 2 hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 3 hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer, which includes next-day tracking. There is no tracking on Sundays and Federal holidays except on a case-by-case basis. Hunters authorized to track on Sundays or Federal holidays must be accompanied afield by a refuge law enforcement officer.

* * * * *

D. Sport Fishing. * * *

14. * * *

i. Conditions D1 through D13 apply.

* * * * *

15. * * *

i. Conditions D1 through D12 apply.

* * * * *

■ 17. Amend § 32.40 by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 18. Amend § 32.41 by revising paragraph C.3 and adding paragraph C.8 under Detroit River International Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Detroit River International Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

3. We allow only single-projectile shells for firearm deer hunting. We prohibit the use of buckshot for any hunting on the refuge.

* * * * *

8. The Fix Unit is closed to firearm deer hunting. We allow only archery deer hunting in the Fix Unit.

* * * * *

■ 19. Amend § 32.42 by:

■ a. Revising the introductory text in paragraph A; revising paragraphs A.1, A.2, and A.5; adding paragraph A.9; revising paragraphs C.1 and C.2; removing paragraphs C.3, C.7, and C.10; redesignating paragraphs C.4, C.5, C.6, C.8, and C.9 as paragraphs C.3, C.4, C.5, C.6, and C.7, respectively; revising newly designated paragraph C.6; and adding paragraph C.8 under Agassiz National Wildlife Refuge.

■ b. Revising paragraph B under Big Stone Wetland Management District.

■ c. Revising paragraphs C.1, C.2, and C.8 and removing paragraph C.11 under Crane Meadows National Wildlife Refuge.

■ d. Revising paragraph B under Detroit Lakes Wetland Management District.

■ e. Revising paragraphs A.2 and B under Fergus Falls Wetland Management District.

■ f. Revising paragraph B under Litchfield Wetland Management District.

■ g. Revising paragraphs A.2, B, and C.2 under Morris Wetland Management District.

■ h. Adding paragraph C.3 under Northern Tallgrass Prairie National Wildlife Refuge.

■ i. Revising paragraphs A.2, A.3, A.5, B.3, C.1, C.7, and D under Sherburne National Wildlife Refuge.

■ j. Revising paragraph B under Windom Wetland Management District.

These additions and revisions read as follows:

§ 32.42 Minnesota.

* * * * *

Agassiz National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow a youth hunt only in designated areas in accordance with State regulations.

2. The refuge is closed from 7:00 p.m. to 5:30 a.m.

* * * * *

5. You must remove all personal property, which includes stands, boats, decoys, and blinds brought onto the refuge, each day of hunting (see §§ 27.93 and 27.94 of this chapter).

* * * * *

9. We allow the public onto the refuge the day prior to the opening of the season for scouting purposes.

* * * * *

C. Big Game Hunting. * * *

1. We are currently closed to moose hunting.

2. Conditions A2 through A5, A7, A8 and A9 apply.

* * * * *

6. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see conditions A5 and C5).

* * * * *

8. Shooting on, from, over, across, or within 30 feet of a road edge open to public vehicle transportation at a big game animal or a decoy of a big game animal is prohibited.

* * * * *

Big Stone Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Crane Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We only allow an archery deer hunt for youth hunters and a firearm deer hunt for persons with disabilities by special use permit (FWS Form 3–1383–G).

2. We only allow a turkey hunt for youth hunters and persons with disabilities by special use permit (FWS Form 3–1383–G).

* * * * *

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

* * * * *

Detroit Lakes Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting in accordance with State regulations throughout the district (except that we allow no hunting on the refuge headquarters Waterfowl Production Area [WPA] in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County) and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Fergus Falls Wetland Management District

A. Migratory Game Bird Hunting. * * *

2. You must remove boats, decoys, blinds, and blind materials (see § 27.93 of this chapter) brought onto the WPAs at the end of each day's hunt.

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district (except that we prohibit hunting on the Townsend, Mavis, Gilmore, and designated portions of Knollwood Waterfowl Production Areas (WPAs) in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations and subject to the following conditions:

1. Conditions A2, A3, and A6 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Litchfield Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the district (except we prohibit hunting on that part of the Phare Lake Waterfowl Production Area in Renville County) in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A4, and A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Morris Wetland Management District

A. Migratory Game Bird Hunting. * * *

2. You must remove boats, decoys, blinds, and blind materials (see § 27.93 of this chapter) at the end of hunting hours.

* * * * *

B. Upland Game Hunting. We allow hunting of upland game, except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County, in accordance with State regulations and subject to the following conditions:

1. Conditions A2 through A4 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. * * *

2. You must remove all portable hunting stands and blinds each day at the close of hunting hours (see § 27.93 of this chapter).

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

3. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

Sherburne National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. We allow non-motorized boats in areas open to waterfowl hunting during the waterfowl hunting season, and they must be launched at designated access sites.

3. You must remove boats, decoys, and blinds from the refuge following each day's hunt.

* * * * *

5. We prohibit hunting from March 1 through August 31.

* * * * *

B. Upland Game Hunting. * * *

3. Conditions A5 through A7 apply.

* * * * *

C. Big Game Hunting. * * *

1. The refuge is closed to turkey hunting, except we allow a turkey hunt for youth hunters and persons with disabilities by special use permit (FWS Form 3–1383–G).

* * * * *

7. Turkey hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

D. Sport Fishing. Fishing is allowed on the St. Francis River and Battle Brook during daylight hours in accordance with State regulations and subject to the following conditions:

1. From March 1 through August 31 (the refuge Wildlife Sanctuary period), fishing is only allowed from non-motorized boats on the designated canoe route and on banks within 100 yards (both upstream and downstream) of designated access points.

2. We prohibit the taking of any mussel (clam), crayfish, frog, leech, and turtle species by any method on the refuge (see § 27.21 of this chapter).

3. We prohibit the use of dip nets, traps, or seines for collecting bait.

* * * * *

Windom Wetland Management District

* * * * *

B. Upland Game Hunting. We allow hunting of upland game throughout the district, except that you may not hunt on the Worthington Waterfowl Production Area (WPA) in Nobles County, Headquarters WPA in Jackson County, or designated portions of the Wolf Lake WPA in Cottonwood County, in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A5 apply.

2. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

* * * * *

■ 20. Amend § 32.44 by:

■ a. Revising the entry for Middle Mississippi River National Wildlife Refuge.

■ b. Revising the introductory text in paragraphs A and B; revising paragraphs A.3, A.6, B.1, B.2, B.5, B.6, B.7, and C; redesignating paragraphs A.7 and A.8 as A.8 and A.9, respectively; and adding new paragraphs A.7 and B.8 under Mingo National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.44 Missouri.

* * * * *

Middle Mississippi River National Wildlife Refuge

Refer to § 32.32 (Illinois) for Missouri regulations.

* * * * *

Mingo National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow waterfowl hunting in Pool 7 and Pool 8 in accordance with State and Federal regulations and subject to the following conditions:

* * * * *

3. We prohibit the use of paint, non-biodegradable flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations (see § 27.61 of this chapter).

* * * * *

6. We require hunters to go through the Missouri Department of Conservation daily draw process at Duck Creek Conservation Area to hunt in Pool 7 and Pool 8.

7. We will only open Pool 7 for waterfowl hunting 3 days a week, when conditions allow.

* * * * *

B. Upland Game Hunting. We allow hunting of squirrel, raccoon, and bobcat in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A3, A8, and A9 apply.

2. We allow hunter access from 1½ hours before legal shooting time until 1½ hours after legal shooting time.

* * * * *

5. We allow squirrel hunting from the State opening day until the day before the State opening of archery deer season.

6. You may only use or possess approved nontoxic shot shells while in the field (see § 32.2(k)) and rifles chambered for rimfire cartridges.

7. Archery hunters may take squirrels, raccoons, and bobcats while archery deer hunting.

8. We allow raccoon hunting by special use permit during the Statewide raccoon season.

C. *Big Game Hunting.* We allow big game hunting in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3, A5, A8, A9, and B2 apply.

2. We require that all hunters register at the hunter sign-in stations and complete the Big Game Harvest Report (FWS Form 3–2359) located at the exit kiosks prior to exiting the refuge.

3. We allow archery hunting for deer and turkey during the fall season.

4. We allow spring turkey hunting. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

5. You must remove all boats brought onto the refuge at the end of each day (see § 27.93 of this chapter).

6. We allow archery hunting in the Expanded General Hunt Area through October 31.

7. We allow portable tree stands only from 2 weeks before to 2 weeks after the State archery deer season with the following exception: In the Expanded General Hunt Area, you must remove all personal property.

8. We allow only one tree stand per deer hunter.

9. We allow only non-motorized boats in the Mingo Wilderness Area.

10. We require archery deer hunters to wear a hunter-orange (*i.e.,* blaze or international orange) hat and a hunter-orange shirt, vest, or coat. These hunter-orange clothes need to be plainly visible from all sides while scouting or hunting during the overlapping portion of the squirrel, archery deer, and turkey seasons. Camouflage orange does not satisfy this requirement.

* * * * *

■ 21. Amend § 32.45 by:

■ a. Removing paragraph A.7; redesignating paragraphs A.3, A.4, A.5, and A.6 as paragraphs A.4, A.5, A.6, and A.7, respectively; revising paragraph B.1; and adding paragraphs A.3 and B.4 under Benton Lake National Wildlife Refuge.

■ b. Revising the introductory text in paragraphs A, B, and C under Benton Lake Wetland Management District.

■ c. Revising paragraphs A.1, A.3, A.5, A.7, A.13, C.1, C.3, and C.4 and adding paragraphs A.19, C.10, and C.11 under Lee Metcalf National Wildlife Refuge.

■ d. Revising paragraphs B.1, B.3, B.5, B.6, B.7, B.9, C.1, C.2, and C.3 and removing paragraphs C.4, C.5, C.6, C.7, C.8, C.9, C.10, and C.11 under Lost Trail National Wildlife Refuge.

■ e. Revising paragraphs A.1, A.2, B.1, B.2, C.1, and D; redesignating paragraph A.3 as paragraph A.6; and adding paragraphs A.3, A.4, A.5, A.7, C.2, and C.3 under Northwest Montana Wetland Management District.

■ f. Revising paragraphs A.5 and C.10 under Red Rock Lakes National Wildlife Refuge.

■ g. Revising paragraph A under Swan River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.45 Montana.

* * * * *

Benton Lake National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

3. We allow hunting during youth waterfowl hunts in accordance with State regulations.

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A2 and A7 apply.

* * * * *

4. We allow hunting during youth pheasant hunts in accordance with State regulations.

* * * * *

Benton Lake Wetland Management District

A. Migratory Game Bird Management. We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following conditions:

* * * * *

B. Upland Game Hunting. We allow the hunting of coyotes, skunks, red fox, raccoons, hares, rabbits, and tree squirrels on Waterfowl Production Areas (WPAs) throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following conditions:

* * * * *

C. Big Game Hunting. We allow big game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H2–0 WPA in Powell County, in accordance with State regulations and subject to the following condition: Condition B2 applies.

* * * * *

Lee Metcalf National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. Hunting Access: Hunters must enter and exit the Waterfowl Hunt Area (see map in refuge Hunting and Fishing brochure) through the Waterfowl Hunt Area parking lot. All hunters, except those with a Montana disability license, must park in the Waterfowl Hunt Area parking lot to access the Waterfowl Hunt Area. For those hunters with Montana disability licenses, contact the Refuge Manager by phone or email for disability guidelines. Hunters must walk to the blind selected along mowed trails designated in the refuge Hunting and Fishing brochure. Legal entry time into the hunting area is no earlier than 2 hours before legal shooting hours. Wildlife observation, scouting, and loitering during waterfowl hunting season are prohibited at the Waterfowl Hunting Area parking lot and on the refuge road leading to the Waterfowl Hunt Area parking lot.

* * * * *

3. Registration (Kiosk Sign-In/Sign-Out box): Each hunter must complete the Migratory Bird Hunt Report (FWS Form 3–2361), must set the appropriate blind selector (metal flip tag) before and after hunting, and must record hunting data (hours hunted and birds harvested) on FWS Form 3–2361 before departing the hunting area.

* * * * *

5. We prohibit attempting to ''reserve'' a blind for use later in the day by depositing a vehicle or other equipment on the refuge. A hunter must be physically present in the hunting area in order to use a blind. The exceptions are blinds 2 and 7, which may be reserved for hunters with disabilities.

* * * * *

7. Hunters with a documented mobility disability (you must have a current year Resident with a Disability Conservation License issued by Montana Fish, Wildlife and Parks) may reserve an accessible blind in advance by contacting a refuge law enforcement officer.

* * * * *

13. We prohibit boats, fishing, and fires (see § 27.95 of this chapter).

* * * * *

19. Any mechanical decoy powered by battery or solar usage is prohibited.

* * * * *

C. Big Game Hunting. * * *

1. Hunting Access: Hunters must enter and exit the hunt areas (see map in refuge Hunting and Fishing brochure) through the designated Hunter Access Parking sites. We open access points to hunters intending to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at access points and parking areas. Hunters may only enter the hunt area 2 hours prior to legal hunting hours and must exit no later than 2 hours after legal hunting hours.

* * * * *

3. Registration (Sign-In/Sign-Out box): Each hunter must complete the Big Game Harvest Report (FWS Form 3–2359) before departing the hunting area.

4. Tree Stands and Ground Blinds: We allow each hunter the use of portable tree stands or ground blinds. All tree stands and ground blinds must be identified with a tag that has the owner's name and Montana archery license (ALS) number on it. We prohibit hunters leaving each stand/blind unattended for more than 72 hours.

* * * * *

10. Rallying game to another hunter and/or deer drives is prohibited.

11. We prohibit the installation or use of remote cameras on the refuge.

* * * * *

Lost Trail National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We do not allow hunting in areas posted as ''Closed to Hunting'' and identified in the public use leaflet.

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3. We allow use of riding or pack stock on designated access routes through the refuge to access off-refuge lands as identified in the public use leaflet.

* * * * *

5. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

6. We prohibit overnight camping and open fires (see § 27.95(a) of this chapter).

7. We prohibit retrieval of game in areas closed to hunting without a refuge retrieval permit.

* * * * *

9. We allow parking in designated areas only as identified in the public use leaflet.

C. Big Game Hunting. * * *

1. Conditions B1 through B9 apply.

2. The first week of the archery elk and deer hunting season and the first week of general elk and deer hunting season are open to youth-only (ages 12–15 only) hunting. A non-hunting adult at least 18 years of age must accompany the youth hunter in the field.

3. Persons assisting disabled hunters must not be afield with a hunting firearm, bow, or other hunting device.

* * * * *

Northwest Montana Wetland Management District

A. Migratory Game Bird Hunting. * * *

1. Hunters must remove all boats, decoys, portable blinds (including those made of native materials), boat blinds, and all other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We prohibit motorboats except on the Flathead and Smith Lake Waterfowl Production Areas (WPAs) in Flathead County. Motorboats must be operated at no wake speeds.

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season. Commercial dog trials are not allowed. Pets must be on a leash at all other times.

5. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

7. We prohibit overnight camping and open fires (see § 27.95(a) of this chapter).

B. Upland Game Hunting. * * *

1. We prohibit hunting with a shotgun capable of holding more than three shells.

2. Conditions A1 through A7 apply.

* * * * *

C. Big Game Hunting. * * *

1. We allow portable tree stands and/or portable ground blinds; however, hunters must remove them and all other personal property at the end of each day (see § 27.93 of this chapter). We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree or hunting from a tree into which a metal object has been driven (see § 32.2(i)).

2. Conditions A2, A3, A6, A7, and B1 apply.

3. Flathead, Blasdel, and Batavia WPAs are restricted to hunting with archery equipment, shotgun, traditional handgun, muzzleloader, or crossbow only.

D. Sport Fishing. We allow sport fishing on all Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and confederated Salish and Kootenai Tribal regulations (Lake County WPAs) and subject to the following conditions:

1. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

2. We prohibit all public access on WPAs from March 1 to July 15 (Flathead County WPAs) each year to protect nesting birds.

3. Conditions A2 and A7 apply.

* * * * *

Red Rock Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

5. We prohibit camping along roadsides. We allow camping only in two established campgrounds. We restrict camping to 16 consecutive days within any 30-day period. We prohibit horses in the campgrounds. From March 1 to December 1, all bear attractants including, but not limited to, food, garbage, and carcasses or parts thereof, must be acceptably stored at night (unless in immediate use) and during the day if unattended. Acceptably stored means any of the following:

i. Suspended at least 10 feet high and 4 feet from any vertical support 100 yards from any camp or hiking trail;

ii. Secured in a certified bear safe container; or

iii. Secured in a hard-sided vehicle, including an enclosed camper or horse trailer.

* * * * *

C. Big Game Hunting. * * *

10. We prohibit hunting and/or shooting from or onto refuge lands from

within 50 yards (45 meters) of the centerline of any public road open to motorized vehicles.

* * * * *

Swan River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

■ 22. Amend § 32.46 by:

■ a. Revising paragraphs C.1, C.2, C.4, and C.5; redesignating paragraphs C.6, C.7, and C.8 as paragraphs C.7, C.8, and C.9, respectively; revising newly designated paragraph C.9; and adding paragraphs C.6, C.10, C.11, C.12, C.13, D.3, and D.4 under Fort Niobrara National Wildlife Refuge.

■ b. Revising the entry for Valentine National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.46 Nebraska.

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Fort Niobrara National Wildlife Refuge

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C. Big Game Hunting. * * *

1. We require the submission of a Big/Upland Game Hunt Application (FWS Form 3–2356). We require hunters to carry a signed refuge hunting access permit (hunt application signed by the refuge officer) while hunting. We require hunters to complete a Big Game Harvest Report (FWS Form 3–2359) and return it to the refuge at the conclusion of the hunting season.

2. We allow deer hunting with muzzleloader and archery equipment. We prohibit deer hunting with firearms capable of firing cartridge ammunition.

* * * * *

4. We allow deer hunting in the area defined as, ''Those refuge lands situated north and west of the Niobrara River.'' We allow access to this area only from designated refuge parking areas and the Niobrara River.

5. We prohibit hunting within 200 yards (180 meters) of any public use facility.

6. We allow hunter access from 2 hours before legal sunrise until 2 hours after legal sunset.

* * * * *

9. We require tree stands, elevated platforms, and ground blinds to be removed daily. We require hunters to clearly label unattended tree stands, elevated platforms, and ground blinds with the hunter's name and address or hunting license number legible from the ground. Tree stands, elevated platforms, and/or ground blinds may be put up no earlier than the opening day of deer season and must be removed by the last day of deer season.

10. We prohibit hunting during the Nebraska November Firearm Deer Season.

11. We prohibit the use of game carts or any other wheeled device to retrieve game on the Wilderness Area portion of the refuge that is opened for hunting.

12. We prohibit the marking of any tree or other refuge feature with reflectors, flagging, paint, or other substances.

13. We prohibit the use of electronic or photographic trail monitoring devices.

D. Sport Fishing. * * *

3. We prohibit the take of baitfish, reptiles, and amphibians.

4. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters.

* * * * *

Valentine National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl and coots on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. We close the refuge to the general public from legal sunset to legal sunrise; however, we allow hunter access from 2 hours before legal sunrise to 2 hours after legal sunset.

2. We only allow you to unleash dogs used to locate, point, and retrieve upland and small game and migratory birds on the refuge while hunting (see § 26.21(b) of this chapter).

B. Upland Game Hunting. We allow hunting of sharp-tailed grouse, prairie chicken, ring-necked pheasant, dove, and coyote on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. Conditions A1 and A2 apply.

2. Coyote hunting is allowed from the Saturday closest to November 13 through March 15. Shooting hours are ½ hour before sunrise to ½ hour after sunset. The use of dogs or bait to hunt coyotes is prohibited.

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific condition: Condition A1 applies.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations and subject to the following refuge-specific regulations:

1. We close the refuge to the general public from legal sunset to legal sunrise; however, anglers may enter the refuge 1 hour before legal sunrise and remain 1.5 hours after legal sunset.

2. We prohibit the take of reptiles, amphibians, and minnows, with the exception that bullfrogs may be taken on refuge lakes open to fishing.

* * * * *

■ 23. Amend § 32.50 by:

■ a. Revising paragraphs A.2.i, A.2.ii, A.2.iii, A.2.iv, A.5, A.8, B.2.iii, and C.2 and adding paragraph B.2.iv under Bitter Lake National Wildlife Refuge.

■ b. Revising the entry for Bosque del Apache National Wildlife Refuge.

■ c. Revising paragraph C under San Andres National Wildlife Refuge.

■ d. Revising paragraph A under Sevilleta National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

2. * * *

i. In the designated public hunting area, this is located in the southern portion of the Tract;

ii. To no closer than 100 yards (90 meters) to the public auto tour route;

iii. To Tuesdays, Thursdays, and Saturdays during the period when the State seasons for the Middle Tract area are open simultaneously for hunting all of the species allowed; and

iv. All hunting must cease at 1 p.m. (local time) on each hunt day.

* * * * *

5. We prohibit pit or permanent blinds and require removal of all waterfowl decoys and all temporary blinds/stands daily after each hunt (see § 27.93 of this chapter).

* * * * *

8. We do not require refuge or other special hunt permits other than those required by the State.

* * * * *

B. Upland Game Hunting. * * *

2. * * *

iii. On Tuesdays, Thursdays, and Saturdays during the appropriate State season for that area; and

iv. All hunting must cease at 1 p.m. (local time) on each hunt day.

* * * * *

C. Big Game Hunting. * * *

2. Conditions A8 and A9 apply.

* * * * *

Bosque del Apache National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning and white-winged dove and light goose on designated areas of the refuge in accordance with State and Federal regulations and any special posting or publications and subject to the following conditions:

1. We allow hunting of light goose on dates to be determined by refuge staff. The permit is available through a lottery drawing (Waterfowl Lottery Application, FWS Form 3–2355) and hunters must pay a fee. Contact the refuge for more information.

2. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 1:00 p.m. (local time) on each hunt day.

3. Refer to the refuge hunt leaflet for designated hunting areas.

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)).

5. We prohibit pit or permanent blinds and require daily removal of all waterfowl decoys, spent shells, all temporary blinds/stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all time (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and dogs from entering closed areas for retrieval of game.

8. We prohibit falconry on the refuge.

9. We prohibit canoeing, boating, or floating through the refuge on the Rio Grande.

10. We prohibit hunting any species on the Rio Grande within the refuge.

11. We prohibit overnight camping without a permit.

12. All State and Federal hunting and fishing regulations regarding methods of take, dates, bag limits, and other factors apply to all hunting and fishing on the refuge, in addition to these refuge-specific regulations.

13. Visit the refuge visitor center or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

B. Upland Game Hunting. We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. We allow only shotguns and archery equipment for hunting of upland game. We prohibit the use of archery equipment on the refuge except when hunting for upland and big game.

2. Conditions A2 through A13 apply.

C. Big Game Hunting. We allow hunting of mule deer, oryx, and bearded Rio Grande turkey on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. Conditions A5 through A13 apply.

2. Refer to the refuge hunt leaflet for designated hunting areas.

3. Hunting on the east side of the Rio Grande is only by foot, horseback, or bicycle. Bicycles must stay on designated roads.

4. We may allow oryx hunting from the east bank of the Rio Grande to the east boundary of the refuge for population management purposes for hunters possessing a valid State permit. We may also establish special hunts of the oryx on dates established by refuge staff. Contact the refuge for more information.

5. Legal hunting hours will run from 1 hour before legal sunrise and will not extend past 1 hour after legal sunset.

6. We allow hunting of bearded Rio Grande turkey for youth hunters only on dates determined by refuge staff. All hunters must fill out FWS Form 3–2356 (Big/Upland Game Hunt Application) and pay a fee. The permit is available through a lottery drawing. If selected, you must carry your refuge special use permit (FWS Form 3–1383–G) at all times during the hunt. All hunters are required to fill out a harvest report (FWS Form 3–2359, Big Game Harvest Report) and return it to the refuge within 72 hours. Contact the refuge for more information.

7. Youth hunters age 17 and under must successfully complete a State-approved hunter education course prior to the refuge hunt. While hunting, each youth must possess and carry a card or certificate of completion.

8. Each youth hunter must remain with an adult companion age 18 or older. Each adult companion must possess and carry an adult companion permit (signed refuge youth turkey hunt brochure) and can supervise no more than one youth hunter. Adult companions may observe and call, but they cannot shoot.

9. We allow the use of temporary ground blinds only for youth turkey hunts, and hunters must remove them from the refuge daily (see § 27.93 of this chapter). It is unlawful to damage, cut, or mark any tree or other refuge structure with paint, flagging tape, ribbon, cat-eyes, or any similar marking device.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. Condition A9 applies.

2. We allow fishing from April 1 through September 30.

3. We allow fishing from ½ hour before legal sunrise until ½ hour after legal sunset.

4. We allow fishing on all canals within the refuge boundaries (Interior Drain, Riverside, Canal, and Low Flow Conveyance Channel), and unit 25AS either from the boardwalk or from shore.

5. We prohibit trotlines, bows and arrows, boats or other flotation devices, seining, dip netting, traps, using bait taken from the refuge, taking of turtle, littering, and all other activities not expressly allowed (see § 27.2l of this chapter).

6. Access to the canals is via the tour loop. We prohibit fishing in closed areas of the refuge, with the exception of the Low Flow Conveyance Channel.

7. We allow frogging for bullfrog on the refuge in areas that are open to fishing.

8. All State and Federal fishing regulations regarding methods of take, dates, creel limits, and other factors apply to all fishing on the refuge, in addition to these refuge-specific regulations.

9. We prohibit fishing for any species on the Rio Grande within the refuge.

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San Andres National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of oryx or gemsbok (*Oryx gazella*) and desert bighorn sheep (*Ovis canadensis mexicana*) is allowed on designated areas of the refuge in accordance with New Mexico Department of Game and Fish (NMDGF) and White Sands Missile Range (WSMR) regulations and subject to the following conditions:

1. Hunters are required to check in and out of the hunt area.

2. Hunters are required to complete an unexploded ordnance (UXO) training prior to entering hunt area.

3. The hunter may be accompanied by no more than three guests including their guide(s).

4. Only approved WSMR outfitters can be used.

5. All hunters must enter and exit through the Small Missile Range gate on Range Road 7.

6. All members of the hunting party are required to wear solid or camouflage-style, florescent orange (hunter's orange) clothing while away from the vehicle and in the field

hunting. A minimum of 144 square inches must appear on both the chest and back (a typical blaze-orange hunting vest).

7. Hunters may be escorted, but not guided, by WSMR, NMDGF, or refuge personnel or their agent(s). Check stations may be used in lieu of hunt escorts.

8. Hunters must follow photo and video policy as described by WSMR regulations.

9. Youth hunters, 16 years of age and younger, must be under the direct supervision of an adult, 18 years of age or older.

10. Persons possessing, transporting, or carrying firearms on National Wildlife Refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

11. Hunters and their guests must abide by all rules established by the refuge, WSMR, and NMDGF regulations.

12. Bighorn Sheep: Hunting desert bighorn sheep is allowed on designated areas of the refuge in accordance with NMDGF and WSMR regulations and subject to the following conditions specifically for bighorn sheep:

i. If camping is allowed on WSMR lands, then camping is allowed at Little San Nicholas Camp on the refuge.

ii. Four-wheeled all-terrain vehicle (ATV) use by hunters or members of their hunting party is prohibited on the refuge, although ATVs may be used to retrieve game on WSMR.

iii. Hunters using livestock (i.e., horses or mules) must provide only weed-free feed to their animals while on the refuge.

iv. Hunters or other members of the hunting party are not allowed to hunt small game or other species during desert bighorn ram hunts. Only bighorn sheep may be hunted by individuals with ram tags.

13. Oryx. Hunting oryx is allowed on designated areas of the refuge in accordance with NMDGF and WSMR regulations and subject to the following condition specifically for oryx: Four-wheeled all-terrain vehicle (ATV) use by hunters or members of their hunting party is allowed on the refuge and WSMR only to retrieve game.

* * * * *

Sevilleta National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning and white-winged doves, geese, ducks, and coots on designated areas of the refuge in accordance with State regulations and any special posting or publications and subject to the following conditions:

1. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 1:00 p.m. (local time) on each hunt day.

2. The refuge may designate special youth and/or persons with disabilities hunting days during the regular game bird season. This will apply to areas and species that are currently part of the refuge's hunting program. Contact the refuge for more information.

3. Refer to the refuge hunt leaflet for designated hunting areas.

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)) in the field, in quantities of 25 or fewer.

5. We prohibit pit or permanent blinds and require daily removal of all waterfowl decoys, spent shells, all temporary blinds/stands, and all other personal equipment (see §§ 27.93 and 27.94 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all time (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and dogs from entering closed areas for retrieval of game.

8. All State and Federal hunting regulations regarding methods of take, dates, bag limits, and other factors, apply to all hunting on the refuge, in addition to these refuge-specific regulations.

9. Visit the refuge visitor center or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

* * * * *

■ 24. Amend § 32.51 New York by adding, in alphabetical order, an entry for Shawangunk Grasslands National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Shawangunk Grasslands National Wildlife Refuge

A. Migratory Game Bird Hunting. [RESERVED]

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State of New York regulations and subject to the following conditions:

1. You must submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. We provide hunters with hunt maps and parking permits (name only), which they must clearly display in their vehicle. Hunters who park on the refuge must park in identified hunt parking areas.

3. We prohibit the use of all-terrain vehicles (ATVs) on the refuge.

4. We prohibit baiting on refuge lands (see § 32.2(h)).

5. We require hunters to wear (in a conspicuous manner) a minimum of 400 square inches (2,600 square centimeters) of solid-color, hunter-orange clothing or material on the head, chest, and back.

6. We prohibit hunters using or erecting permanent blinds.

7. We allow pre-hunt scouting beginning 2 weeks prior to the bow opener and continuing through the end of the deer season.

8. The refuge only allows archery equipment (crossbows allowed) to harvest deer.

D. Sport Fishing. [RESERVED]

* * * * *

■ 25. Amend § 32.53 by:

■ a. Adding paragraph B.4 under Audubon National Wildlife Refuge.

■ b. Revising paragraphs B and C under Des Lacs National Wildlife Refuge.

■ c. Revising the introductory text in paragraphs B and D; revising paragraphs A.2, B.2, B.3, B.4, B.5, C.2, C.3, C.4, C.5, D.2, D.3, D.4, D.5, and D.6; and adding paragraphs B.6, B.7, B.8, B.9, C.6, C.7, C.8, C.9, D.7, and D.8 under J. Clark Salyer National Wildlife Refuge.

■ d. Revising the introductory text in paragraph B and revising paragraphs C.2 and D under Tewaukon National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.53 North Dakota.

* * * * *

Audubon National Wildlife Refuge

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B. Upland Game Hunting. * * *

4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

* * * * *

Des Lacs National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt sharp-tailed grouse, Hungarian partridge, turkey, ring-necked pheasant, cottontail rabbit,

jackrabbit, snowshoe hare, and fox on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. Upland game bird and rabbit season opens on the day following the close of the regular firearm deer season through the end of the State season.

4. You may use hunting dogs for retrieval of upland game. Dogs must be under direct control.

5. Turkey hunting is subject to all State regulations, license requirements, units, and dates.

6. Fox hunting is allowed on the day following the regular firearm deer season and closes on March 31.

7. We prohibit hunting the area around refuge headquarters, buildings, shops, and residences. We post these areas with ''Closed to Hunting'' signs.

8. We proibit the use of snowmobiles, all-terrain vehicles (ATVs), off-highway vehicles (OHVs), utility terrain vehicles (UTVs), bicycles, or similar vehicles on the refuge.

9. We prohibit the use of horses, mules, or similar livestock on the refuge during all hunting seasons.

C. *Big Game Hunting.* * * *

2. We prohibit hunting the area around the refuge headquarters, buildings, shops, and residences. We post these areas with ''Closed to Hunting'' signs.

3. We open nine designated Public Hunting Areas (as delineated on the refuge hunting brochure map available at the refuge headquarters or posted on refuge information boards and/or kiosks) on the refuge for deer hunting during the regular firearms issued from the State.

4. You must possess and carry a refuge permit to hunt antlered deer on the refuge outside the nine Public Hunting Areas during the regular firearms season.

5. We only allow the use of portable tree stands and ground blinds. We prohibit leaving stands and blinds overnight (see § 27.93 of this chapter) on the refuge.

6. We prohibit the use of flagging, trail markers, paint, reflective tacks, or other types of markers (see § 27.93 of this chapter).

7. We prohibit the use of trail cameras and other electronic surveillance equipment.

8. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons. Refuge roads open to the public may be accessed before 12 p.m. (noon).

9. Conditions B8 and B9 apply.

D. Sport Fishing. We allow sport fishing on the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

2. We allow boat and bank fishing only on specifically designated portions of the refuge as delineated on maps, leaflets and/or signs, available at the refuge headquarters or posted on refuge information boards.

3. We only allow non-motorized boats or boats with electric motors.

4. Boat fishing is allowed from May 1 through September 30.

5. We prohibit entry to or fishing from any water control structure.

6. We open all refuge waters to ice fishing. Ice fishing access is limited to foot traffic only.

7. We allow the use of portable fish houses for ice fishing. Portable fish houses may not be left out overnight.

8. Conditions B8 and B9 apply.

* * * * *

Tewaukon National Wildlife Refuge

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B. Upland Game Hunting. We allow ring-necked pheasant hunting on designated areas of the refuge (see refuge brochure/maps for designated area) in accordance with State regulations and subject to the following conditions:

* * * * *

C. Big Game Hunting. * * *

2. We allow deer gun hunting on designated areas of the refuge (see refuge brochure/maps for designated areas) in accordance with State regulations.

* * * * *

D. Sport Fishing. We allow sport fishing on designated waters (Tewaukon and Sprague Lakes only) in accordance with State regulations and subject to the following conditions:

1. We allow boats from May 1 through September 30.

2. We allow ice fishing on designated portions of Tewaukon and Sprague Lakes (see refuge brochure/maps for designated areas) in accordance with State regulations.

* * * * *

■ 26. Amend § 32.54 by revising paragraph C.2; removing paragraph C.3; and redesignating paragraphs C.4, C.5, C.6, C.7, C.8, and C.9 as paragraphs C.3, C.4, C.5, C.6, C.7, and C.8, respectively, under Ottawa National Wildlife Refuge to read as follows:

§ 32.54 Ohio.

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Ottawa National Wildlife Refuge

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C. Big Game Hunting. * * *

2. We require that hunters check out at the refuge check station with a State-issued Big Game Harvest Report no later than 1 hour after the conclusion of their controlled hunt.

* * * * *

■ 27. Amend § 32.56 by:

a. Revising paragraph A under Bandon Marsh National Wildlife Refuge.

b. Adding, in alphabetical order, an entry for Baskett Slough National Wildlife Refuge.

■ c. Revising the introductory text in paragraph A, revising paragraphs A.2 and A.3, and adding paragraph A.4 under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer.

■ d. Adding paragraphs A.4 and A.5 under Lewis and Clark National Wildlife Refuge.

■ e. Redesignating paragraph A.2 as A.4; revising paragraphs A.1, B, C, D.1, and D.2; and adding paragraphs A.2, A.3, A.5, A.6, A.7, A.8, D.3, D.4, and D.5 under Malheur National Wildlife Refuge.

■ f. Adding, in alphabetical order, an entry for Nestucca Bay National Wildlife Refuge.

■ g. Adding, in alphabetical order, an entry for Siletz Bay National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.56 Oregon.

* * * * *

Bandon Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and snipe on that portion of the refuge west of U.S. Highway 101 and outside the Bandon city limits 7 days per week, and hunting of goose, duck, and coot on the Ni-les'tun Unit of the refuge 3 days per week, in accordance with State regulations and subject to the following conditions:

1. The established days for waterfowl hunting on the Ni-les'tun Unit will be Wednesday, Saturday, and Sunday.

2. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

3. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

5. Hunters accessing the Ni-les'tun Unit via boat must secure or anchor boats and use established boat launch areas. Hunters may park boats within the marsh while they hunt, but boats landing on the bank of the Coquille River within the Ni-les'tun Unit will be required to park within a designated location.

6. Access to the refuge will be prohibited from 1 hour after sunset to 1 hour before sunrise.

7. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all times. Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

8. Hunters may enter closed areas of the refuge only to retrieve downed birds.

* * * * *

Baskett Slough National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck and goose on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Only hunters 15 years of age and younger are allowed to participate in the Youth Waterfowl Hunt. Youths must be accompanied by an adult 21 years of age or older.

2. Blinds, decoys, and other personal property must be removed at the end of each day's hunt (see § 27.93 of this chapter).

3. Vehicles are restricted to designated public use roads and designated parking areas.

4. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

5. You may possess only approved nontoxic shells for hunting during the early September Goose Hunt and the Youth Duck Hunt.

6. Open fires are not allowed.

7. Waterfowl and goose permit (name only) hunters must check back to the refuge check station prior to leaving the refuge and submit a Migratory Bird Hunt Report (FWS Form 3–2361).

8. Goose hunters are required to space themselves no less than 200 yards apart from each other during the early September Goose Hunt.

9. No overnight camping or after-hours parking is allowed on the refuge.

10. No hunting is allowed from refuge structures, observation blinds, boardwalks, or similar structures.

11. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and refuge-specific regulations in this part 32).

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on the refuge-owned shorelines of Crims and Wallace Islands in accordance with State regulations and subject to the following conditions:

* * * * *

2. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

3. We open the refuge for day-use access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

4. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

Lewis and Clark National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

4. We open the refuge for hunting access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

5. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

Malheur National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow nonmotorized boats or boats equipped with only electric motors on the North and South Malheur Lake Hunt Units. All boats are prohibited on the Buena Vista Hunt Unit.

2. We allow only portable and temporary hunting blinds. We prohibit permanent structures.

3. You must remove boats, decoys, blinds, materials and all personal property at the end of each day (see § 27.93 of this chapter).

* * * * *

5. We may close any refuge access easement road, refuge road, or hunting access point for public safety, or when travel may be detrimental to the area.

6. The North Malheur Lake Hunt Unit is open during all established State of Oregon migratory bird hunting seasons.

7. The South Malheur Lake and Buena Vista Hunt Units open for migratory bird hunting on the fourth Saturday of October and close at the end of the State waterfowl season.

8. The South Malheur Lake Hunt Unit may be accessed from the Boat Launch Road, or from the North Malheur Lake Hunt Unit, but no earlier than the fourth Saturday of October.

B. Upland Game Hunting. We allow hunting of pheasant, quail, partridge, chukar, and rabbit on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field (see § 32.2(k))

2. We allow hunting of upland game species on designated areas of the Blitzen Valley east of Highway 205 from the fourth Saturday in October through the end of the State pheasant season.

3. We allow hunting of upland game species on the North Malheur Lake Hunt Unit concurrent with the State pheasant season.

4. We allow hunting of all upland game species on designated areas of the refuge west of Highway 205 and south of Foster Flat Road, and on designated areas of Krumbo Creek east of the Krumbo Reservoir in accordance with State regulations.

5. We may close any refuge access easement road, refuge road, or hunting access point for public safety, or when travel may be detrimental to the area.

C. Big Game Hunting. We allow hunting of deer and pronghorn on designated areas of the refuge west of Highway 205 and south of Foster Flat Road, and on designated areas of Krumbo Creek east of the Krumbo Reservoir, in accordance with State regulations.

D. Sport Fishing. * * *

1. We prohibit ice fishing on and all public access to any ice formations.

2. We allow fishing year-round on Krumbo Reservoir and in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek.

3. Fishing is allowed on the north bank of the Blitzen River from Sodhouse Lane downstream to the bridge on the Boat Landing Road between August 1 and September 15.

4. We prohibit boats on public fishing areas, except that nonmotorized boats and boats equipped with only electric

motors may be used on Krumbo Reservoir.

5. We may close any refuge access easement road, refuge road, or fishing access point for public safety, or when travel may be detrimental to the area.

* * * * *

Nestucca Bay National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks and coot on refuge lands at Brooten Marsh and the mouth of the Little Nestucca River 7 days per week in accordance with State regulations and subject to the following conditions:

1. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

2. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

3. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Access to the refuge will be prohibited from 1 hour after sunset to 2 hours before sunrise.

5. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all times (see § 26.21(b) of this chapter). Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

6. Hunters may enter closed areas of the refuge only to retrieve downed birds.

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

Siletz Bay National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, and coot on refuge lands west of U.S. Highway 101 7 days per week and on the Millport Slough South Unit of the refuge 3 days per week, in accordance with State regulations and subject to the following conditions:

1. The established days for waterfowl hunting on the Millport Slough South Unit will be Wednesday, Saturday, and Sunday.

2. Only federally approved nontoxic shot may be used or be in hunters' possession while hunting on the refuge (see § 32.2(k)).

3. Only portable blinds or blinds constructed of on-site dead vegetation or driftwood may be used (see § 27.51 of this chapter).

4. All blinds, decoys, shotshell hulls, and other personal equipment and refuse must be removed from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. Access to the refuge will be prohibited from 1 hour after sunset to 2 hours before sunrise.

6. The use or possession of alcoholic beverages while hunting is prohibited.

7. Hunters may use dogs as an aid to retrieving waterfowl during the hunting season; however, dogs must remain under control of the handler at all time (see § 26.21(b) of this chapter). Dogs must be in a vehicle or on a leash until they are in the marsh as a part of the hunt.

B. Upland Game Hunting. [RESERVED]

C. Big Game Hunting. [RESERVED]

D. Sport Fishing. [RESERVED]

* * * * *

■ 28. Amend § 32.57 by adding, in alphabetical order, an entry for Cherry Valley National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Cherry Valley National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory birds, including waterfowl (*i.e.,* ducks, mergansers, coots, and geese), doves, woodcock, snipe, rails, moorhens, and gallinules, on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. You must submit a Migratory Bird Hunt Application (FWS Form 3–2357) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. We issue one companion permit (no personal information) at no charge to each hunter. We allow companions to observe and/or call, but not to shoot a firearm or bow. Companion and hunters must set up in the same location. We provide hunters with hunt maps and parking permits (name only), which they must clearly display in their vehicle. Hunters who park on the refuge must park in identified hunt parking areas.

3. We prohibit the use of all-terrain vehicles (ATVs) on the refuge.

4. We require hunters to wear (in a conspicuous manner) solid-color, hunter-orange clothing or material, consistent with Pennsylvania Game Commission regulations.

5. We prohibit hunters using or erecting permanent or pit blinds.

6. We require hunters to remove all hunting blind material, boats, and decoys from the refuge at the end of each hunting season (see § 27.93 of this chapter).

7. We allow pre-hunt scouting concurrent with big game scouting continuing through the end of the migratory bird season; however, we prohibit the use of dogs during scouting.

8. Dogs may only be used for waterfowl hunting. We limit the number of dogs per waterfowl hunting party to no more than two dogs.

9. We allow hunters to enter the refuge 2 hours before shooting time (as prescribed by Pennsylvania Game Commission regulations), and they must leave no later than 2 hours after the end of shooting time.

B. Upland Game Hunting. We allow hunting of squirrels, grouse, rabbit, pheasant, quail, woodchuck, crow, fox, raccoon, opossum, skunk, weasel, coyote, and bobcat on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application/Permit (FWS Form 3–2356) to hunt on the refuge. We require hunters to possess a signed refuge hunt permit (name and address only) at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. Conditions A3, A4, A5, and A9 apply.

3. We prohibit scouting.

4. No dogs allowed.

5. We prohibit baiting on refuge lands (see § 32.2(h)).

6. We only allow hunting from 1 half hour before legal sunrise to legal sunset. We prohibit night hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer, bear, and wild turkey on designated areas of the refuge in accordance with State of Pennsylvania regulations and subject to the following conditions:

1. Conditions A3, A4, A5, A9, B1, and B5 apply.

2. We allow pre-hunt scouting beginning 2 weeks prior to the bow opener and continuing through the end of the deer season.

3. We require hunters to remove all portable hunting blind materials from the refuge at the end of each hunting season (see § 27.93 of this chapter).

D. Sport Fishing. [RESERVED]

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■ 29. Amend § 32.61 by:
■ a. Removing paragraph A.1; redesignating paragraphs A.2 and A.3 as paragraphs A.1 and A.2, respectively; revising paragraphs B.1 and C.5; and adding paragraphs B.3 and C.10 under Sand Lake National Wildlife Refuge.
■ b. Revising paragraphs A, C.4, and D under Sand Lake Wetland Management District.

These revisions and additions read as follows:

§ 32.61 South Dakota.

* * * * *

Sand Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. The game bird season begins the Monday following closure of the refuge firearms deer season and continues through the first Sunday in January.

* * * * *

3. Hunters are not allowed to enter the refuge each day until 10:00 a.m.

C. Big Game Hunting. * * *

5. Hunters may place their tree stands, elevated platforms, and portable ground blinds on the refuge only during their designated licensed season. These stands must be removed by the end of their designated licensed season (see § 27.93 of this chapter).

* * * * *

10. Trail monitor cameras are not allowed on the refuge.

* * * * *

Sand Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations and subject to the following conditions:

1. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time.

3. We allow the use of motorized boats.

* * * * *

C. Big Game Hunting. * * *

4. You must remove portable ground blinds, trail cameras, and other personal property by the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations and subject to the following conditions:

1. You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

2. We allow the use of motorized boats.

* * * * *

■ 30. Amend § 32.63 by:
■ a. Revising paragraphs A, C.1, C.2, and C.3 and removing paragraphs C.4, C.5, C.6, C.7, C.8, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, C.17, C.18, C.19, and C.20 under Aransas National Wildlife Refuge.
■ b. Revising paragraphs A.2, A.3, A.4, A.5, A.6, A.7, A.9, A.11, B, and C under Balcones Canyonlands National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, coots, and mergansers on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Each adult hunter 17 years of age or older must possess an Annual Public Hunting Permit (APH) administered by the State.

2. Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 12:30 p.m.

3. Youth under 17 years of age are required to be under the immediate supervision of a duly permitted, authorized supervising adult, age 18 or older.

4. Shotguns with nontoxic shot are the legal means that may be used or possessed during these hunts (see § 32.2(k)).

5. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds from the refuge daily (see § 27.93 of this chapter).

6. We only allow vehicular travel on designated roads and in parking areas.

7. All hunters are transported to and from their hunting location by Texas Parks and Wildlife Department (TPWD) personnel.

8. Hunter check-in begins at 5:00 a.m. and ends at 5:30 a.m. All hunters are required to check in and out at the hunter check station located on the north end of the Island.

9. Hunters will select hunt sites on a first-come, first-served basis.

10. Waterfowl hunts are morning only, begin at legal shooting time, and end at 12:00 p.m. (noon).

11. Dogs accompanying hunters must be under the immediate control of handlers at all times (see § 26.21(b) of this chapter).

12. Hunters must remove all decoys, boats, spent shells, marsh chairs, and other equipment from the refuge daily (see §§ 27.93 and 27.94 of this chapter). We prohibit the use of plastic flagging, reflectors, or reflective tape.

13. Hunting of geese is prohibited.

14. The entire refuge or any portion thereof may immediately close to hunting in the event of whooping cranes present within the hunt area.

* * * * *

C. Big Game Hunting. * * *

1. On the Blackjack Unit, we allow hunting subject to the following conditions:

i. We may immediately close the entire refuge or any portion thereof to hunting in the event of the appearance of whooping crane in the hunt area or in order to conduct habitat management practices as required during the available windows (*e.g.,* prescribed burns, roller chopping, fire breaks).

ii. We prohibit the use of dogs to trail game.

iii. We prohibit target practice or any nonhunting discharge of firearms.

iv. We prohibit hunting with the aid of bait, salt, or any ingestible attractant (see § 32.2(h)). We allow sprays and other non-ingestible attractants.

v. Firearm hunters must wear a total of 400 square inches (2,600 square centimeters) hunter orange, including 144 square inches (936 square centimeters) visible in front and 144 square inches visible in rear. Some hunter orange must appear on head gear.

vi. All hunters must fill out FWS Form 3–2359 (Big Game Harvest Report) upon leaving the hunt area.

vii. For the archery and rifle season, hunters must obtain a refuge permit (name only required) and pay a fee. The hunter must tape the smaller vehicle tag on the driver's side windshield. The hunter must sign the larger permit and possess it at all times while on the refuge.

viii. We define youth hunters as ages 9 to 16. A Texas-licensed, adult hunter, age 17 or older who has successfully completed a Hunter Education Training Course, must accompany youth hunters. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement. Each adult hunter may supervise two youth hunters.

ix. We will annually designate bag limits in the refuge hunt brochure.

x. We allow archery hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

xi. We allow firearm hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

xii. Hunters must clean all harvested game in the field.

xiii. We prohibit hunting on or across any part of the refuge road system, or hunting from a vehicle on any refuge road or road right-of-way. Hunters must remain at a minimum of 100 yards (90 meters) off any designated refuge road or structure.

xiv. We prohibit hunters using handguns during archery and rifle hunts. Hunters may use bows and arrows only in accordance with State law. We prohibit use of crossbows for hunting unless we issue a special use permit (FWS Form 3–1383–G) due to ''upper 2 limb'' disability. We allow the use of archery equipment and centerfire rifles for hunting in accordance with State law.

xv. We allow use of portable hunting stands, stalking of game, and still hunting. There is a limit of two portable stands per permitted hunter. A hunter may set up the portable stands during the scouting week, but must remove them when the hunter's permit expires (see § 27.93 of this chapter). We prohibit hunters from driving nails, spikes, or other objects into trees or hunting from stands secured with objects driven into trees (see § 32.2(i)). We prohibit the building of pits and permanent blinds.

xvi. We prohibit blocking of gates and roadways (see § 27.31(h) of this chapter). We prohibit vehicles operating off-road for any reason. Hunters must park vehicles in such a manner as to not obstruct normal vehicle traffic.

xvii. We allow the use of only biodegradable flagging tape to mark trails and hunt stand location during the archery and rifle hunts on the refuge. We color-code the flagging tape used each weekend during the rifle hunts. Hunters must use the designated flagging tape color specified for particular hunt dates. We provide this information on the refuge hunt permit and in refuge regulations sent to permittees. Hunters must remove flagging (see § 27.93 of this chapter) at the end of the hunt. The hunter must write his/her last name in black permanent marker on the first piece of flagging tape nearest the adjacent designated roadway.

xiii. We prohibit camping.

2. On the Matagorda Island Unit, we allow hunting subject to the following conditions:

i. Big Game Hunting Blackjack Unit conditions: C.1.i through C.1.vi apply.

ii. Special permits are issued by lottery drawing through the TPWD Public Hunting Program for big game hunts.

iii. TPWD staff will transport all hunters to and from the designated hunting stand.

iv. All hunters are required to stay in their designated stand unless they are retrieving their game. Stalking of game is prohibited.

v. For hunts administered by TPWD, youth hunters are not required to complete a Hunter Education Training Course. However, supervising adults born on or after September 2, 1971, must have passed a Hunter Education Training Course or possess a State-issued deferral.

vi. Each adult hunter may supervise up to two youth hunters.

vii. Hunters can clean all harvested game in the field or at the designated cleaning area at the headquarters.

viii. All deer harvested during the hunt will be tagged with a TPWD-issued Special Drawn Legal Deer Tag.

ix. Hunters are allowed to camp in the designated camping area.

3. On the Tatton Unit, we allow hunting subject to the following conditions:

i. Big Game Hunting Blackjack Unit conditions: C.1.i through C.1.v apply.

ii. We define youth hunters as ages 9 to 16. All hunters born after September 2, 1971 must have completed a State-certified hunter education course for refuge administered hunts. A Texas-licensed, adult hunter, age 17 or older who has successfully completed a Hunter Education Training Course, must accompany youth hunters. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement.

iii. Hunters are transported to and from their hunting location via government vehicles.

* * * * *

Balcones Canyonlands National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

2. Hunting allowed in designated area(s) from noon to sunset.

3. Refuge will set the bag limits.

4. You may possess only approved nontoxic shot for hunting while in the field (see § 32.2(k)).

5. Refuge permits (name only) are required with payment of a hunt fee.

6. Dogs are allowed to retrieve game birds during the hunt, but the dogs must be under control of the handler at all times and not allowed to roam free (see § 26.21(b) of this chapter).

7. Hunters must be at least 12 years of age. An adult 21 years of age or older must accompany hunters between the ages of 12 and 17 (inclusive) as per State regulations.

* * * * *

9. The entire refuge or any portion thereof may be closed to hunting for the protection of resources or public safety as determined by the Refuge Manager.

* * * * *

11. Hunter may bring up to two guests. Guests may not use a hunting firearm. Guests must be with the hunter at all times.

B. Upland Game Hunting. We allow hunting of wild turkey at designated times on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Hunting is permitted consistent with the State season.

2. Hunters are required to check in and out daily at designated check station(s).

3. Weapons will be consistent with State and Federal regulations.

4. The entire refuge or any portion thereof may be closed to hunting for the protection of resources or public safety as determined by the Refuge Manager.

5. Hunters must be at least 12 years of age. An adult 21 years of age or older must accompany hunters between the ages of 12 and 17 (inclusive) as per State regulations. This adult may supervise no more than two hunters.

6. The refuge will set the bag limits.

7. Hunters must visibly wear 400 square inches (2,600 square centimeters) of hunter orange on the outermost layer of the head, chest, and back, which must include a hunter-orange hat or cap.

8. Refuge permits and the payment of a hunt fee are required.

9. Dogs are not allowed for hunting.

10. Vehicles may only be operated on designated roads and parking areas.

11. Off road use of all-terrain vehicles (ATVs) is prohibited, except to retrieve bagged game.

12. Standby hunting permits are issued only if openings are available on the day of each hunt on a first-come, first-served basis. Contact Refuge Manager for details.

13. The use or possession of bait is prohibited during scouting or hunting (see § 32.2(h)). Bait is considered anything that may be eaten or ingested by wildlife. Scent attractants are allowed.

14. A hunter may bring one guest. Guest may not use a hunting firearm or other hunting weapon (archery). Guest

may assist hunter in game retrieval or field dressing activities. Guest must be with the hunter at all times.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog at designated times on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions B1 through B14 apply.

* * * * *

■ 31. Amend § 32.64 by revising paragraphs C.4, C.5, C.6, and C.7 under Ouray National Wildlife Refuge to read as follows.

§ 32.64 Utah.

* * * * *

Ouray National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

4. We allow any-legal-weapon elk hunting for youth, disabled, and depredation pool hunters during State seasons subject to refuge regulations.

5. We allow archery elk hunting during the general and the Uintah Basin extended archery elk hunts during State seasons subject to refuge regulations.

6. We are closed for the general any-legal-weapon (rifle) and muzzleloader bull elk hunts.

7. We allow any-legal-weapon elk hunting during limited late season antlerless elk hunts starting on December 1 during State seasons subject to refuge regulations.

* * * * *

■ 32. Amend § 32.65 by adding, in alphabetical order, an entry for Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Silvio O. Conte National Fish and Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, geese, crows, and American woodcock at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Shooting across, over, or within 10 feet of the traveled portion of any gravel road is prohibited in the interest of public safety (see §§ 25.71 of this chapter).

2. You may only use portable blinds.

3. We allow the use of retrieving, flushing, pointing, and pursuit dogs; however, dogs must be under control as is reasonable and customary for that activity, such as voice command or remote telemetry (see § 26.21(b) of this chapter).

4. We prohibit the use of all-terrain and off-highway vehicles (ATVs and OHVs).

5. You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge at the end of each hunt day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of coyote, fox, raccoon, bobcat, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, snowshoe hare, eastern cottontail, and ruffed grouse at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Conditions A1 through A4 apply.

2. To monitor and mitigate potential disturbances to wildlife and neighboring landowners, raccoon hunters hunting at night with dogs will require a special use permit (FWS Form 1383–G) issued by the refuge manager.

C. Big Game Hunting. We allow hunting of white-tailed deer, moose, black bear, and wild turkey at the Nulhegan Basin Division and Putney Mountain Unit in accordance with State of Vermont regulations, seasons, and bag limits subject to the following conditions:

1. Conditions A1 through A4 apply.

2. We allow only temporary tree stands and you must remove them (see § 27.93 of this chapter) by the end of the final deer season. Your name and address must be clearly visible on the tree stand. We prohibit nails, screws, or screw-in climbing pegs to build or access a stand (see § 32.2(i)).

3. Moose may be retrieved at the Nulhegan Basin Division by a commercial moose hauler, subject to a special use permit (FWS Form 1383–C) issued by the refuge manager.

D. Sport Fishing. [RESERVED]

* * * * *

■ 33. Amend § 32.66 by revising paragraphs C.1, C.5, C.12, and C.13 under Back Bay National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Back Bay National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Hunt regulations, hunting application procedures, seasons, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available on the refuge's Web site.

* * * * *

5. All selected and standby applicants must enter the refuge between 4 a.m. and 4:30 a.m. on each hunt day. We may issue standby hunters permits (name only) to fill vacant slots by lottery. Hunting hours will comply with State laws.

* * * * *

12. We allow scouting on designated days prior to the start of each refuge hunt period. Hunters may enter the hunt zones on foot, on bicycle, or through transportation provided by the refuge only. Scouts must wear 400 square inches (2,600 square centimeters) of visible blaze orange.

13. Hunters may go to Hunt Zone 1 (Long Island) only by hand-launched watercraft (canoe, punt, rowboat, and similar watercraft) from the canoe launch at refuge headquarters. Your boat must meet Coast Guard safety requirements. We prohibit use of trailers.

* * * * *

■ 34. Amend § 32.67 by:

■ a. Removing paragraphs B.2 and C.2 and redesignating paragraphs B.3 and C.3 as paragraphs B.2 and C.2, respectively, under Columbia National Wildlife Refuge.

■ b. Revising paragraphs A, C.9, and D under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer.

■ c. Revising paragraph A.6 under McNary National Wildlife Refuge.

■ d. Revising paragraphs A.3, A.5, A.11, A.13, and A.14 and adding paragraph A.17 under Ridgefield National Wildlife Refuge.

■ e. Revising paragraphs A, B, and C under Willapa National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.67 Washington.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on the refuge-owned shorelines of Hunting and Price Islands in accordance with State regulations and subject to the following conditions:

1. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

2. You may not shoot or discharge any hunting firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

3. We prohibit permanent blinds. You must remove all personal property,

including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

4. We prohibit hunting along refuge-owned shorelines of Hunting and Price Islands where it parallels Steamboat Slough.

5. We open the refuge for hunting access from 1½ hour before legal sunrise until 1½ hour after legal sunset.

6. We prohibit dogs on the refuge, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

9. We require hunters to sign in and out each day at the refuge headquarters. When signing out for the day, you must report hunting success, failure, and any hit-but-not retrieved animals on the Big Game Harvest Report (FWS Form 3–2359).

* * * * *

D. Sport Fishing. Bank fishing is allowed from the Mainland Unit shoreline adjoining the Elochoman and Columbia Rivers as well as Steamboat and Brooks Sloughs, in accordance with State fishing regulations. Bank fishing is allowed in the pond adjacent to the diking district pumping station by Brooks Slough. All other areas of the mainland unit are closed to fishing. Bank fishing is allowed along the shorelines of refuge islands in accordance with State regulations.

* * * * *

McNary National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

6. On the Peninsula Unit, we allow hunting subject to the following conditions: On the east shoreline of the Peninsula Unit, we allow hunting only from established numbered blind sites, assigned on a first-come, first-served basis, and we require hunters to remain within 100 feet (30 meters) of marked posts unless retrieving birds or setting decoys.

* * * * *

Ridgefield National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

3. We limit hunting of dusky Canada goose in accordance with State regulations and quotas. The State defines dusky Canada goose as a dark breasted Canada goose, as determined by a Munsell color chart 10 YR, 5 or less, with a culmen (bill) length of 40 to 50 millimeters (1.6 to 2 inches). We will close the refuge goose season early if the dusky Canada goose harvest reaches the refuge quota assigned by the State.

* * * * *

5. Prior to entering the hunt area, you must pay a recreation user fee, obtain a blind assignment, and obtain a Migratory Bird Hunt Report (FWS Form 3–2361). You must carry the Migratory Bird Hunt Report while hunting as proof of blind assignment and user fee payment.

* * * * *

11. You may possess only approved nontoxic shotshells for hunting (see § 32.2(k)) in quantities of 25 or fewer per day.

* * * * *

13. Prior to switching blinds, you must first report to the refuge check station to obtain a new blind assignment. You must submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361) for the blind being vacated, and obtain a new Migratory Bird Hunt Report for the new blind.

14. Prior to leaving the hunt area, you must check out at the refuge check station, submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361), and present all harvested birds for inspection by check station personnel.

* * * * *

17. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

* * * * *

Willapa National Wildlife Refuge

A. Migratory Game Bird Hunting. Hunting of geese, ducks, coots, and snipe is allowed on designated areas of the refuge in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola and Tarlatt Units, all hunters are required to obtain and carry a Migratory Bird Hunt Application (FWS Form 3–2357), pay a recreation user fee, obtain a blind assignment, and report waterfowl taken per instructions on the Migratory Bird Hunt Report (FWS Form 3–2361).

2. At the Riekkola and Tarlatt Units, hunters may take ducks and coots only coincidental to hunting geese.

3. Goose hunting is allowed on Wednesday and Saturday in the Riekkola and Tarlatt Units only from established blinds.

4. At the Riekkola and Tarlatt Units, you may possess no more than 25 approved nontoxic shells per day while hunting.

5. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

6. You may not shoot or discharge any hunting firearm from, across, or along a public highway, designated route of travel, road, road shoulder, road embankment, or designated parking area.

7. We prohibit camping on the refuge except in designated campgrounds on Long Island for up to 14 days.

8. We open the refuge for hunting access from 1½ hour before legal sunrise until 1½ hour after legal sunset.

9. We require dogs to be kept on a leash, except for hunting dogs engaged in authorized hunting activities, and under the immediate control of a licensed hunter (see § 26.21(b) of this chapter). We prohibit dogs on Long Island and on beaches within the Leadbetter Point Unit.

10. Access to the hunt area is by foot or boat access only. We allow bicycles on designated roads and trails only. Mobility-impaired hunters should consult the refuge manager for allowed conveyances.

11. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow hunting of forest grouse (sooty and ruffed) on Long Island, subject to the following conditions:

1. Hunters are required to obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2356) and report game taken, hours hunted, and name/address/date on the Upland/Small Game/Furbearer Report (FWS Form 3–2362).

2. Archery hunting only.

3. You may not shoot or discharge a firearm on Long Island.

4. Dogs are not allowed on Long Island.

5. Conditions A7 through A10 apply.

6. We prohibit fires on the refuge, except in designated campgrounds on Long Island (see § 27.95(a) of this chapter).

C. Big Game Hunting. We allow hunting of deer, elk, and bear on designated areas of the refuge, in accordance with State regulations subject to the following conditions:

1. At Long Island hunters must obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2356) and report game taken, hours hunted and name/address/date on the Big Game Harvest Report (FWS Form 3–2359).

2. At Long Island, only archery hunting is allowed, and hunting firearms are prohibited.

3. Bear hunting is prohibited on any portion of the refuge except Long Island.

4. The use of centerfire or rimfire rifles is prohibited within the Lewis, Porter Point, and Riekkola Units.

5. Dogs are prohibited.

6. Conditions A7 through A10 and B6 apply.

7. We prohibit construction or use of permanent blinds, platforms, ladders, or screw-in foot pegs.

8. You must remove all personal property, including stands, from the refuge by 1½ hours after legal sunset (see §§ 27.93 and 27.94 of this chapter).

9. Tree stands may stay in place for 3 days and must be labeled with the hunter's name and phone number, and the date the stand was set-up. The stand may be set-up 1½ hours before legal sunrise. The stand must be removed before 1½ hours after legal sunset on the third day.

* * * * *

■ 35. Amend § 32.69 by revising paragraph B.5 and removing paragraph B.6 under Necedah National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

5. You may only hunt snowshoe hare during the season for cottontail rabbit.

* * * * *

■ 36. Amend § 32.70 Wyoming by adding, in alphabetical order, an entry for Cokeville Meadows National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Cokeville Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, dark geese, coots, mergansers, snipe, Virginia rail, Sora rail, sandhill crane, and mourning dove in accordance with State regulations and subject to the following conditions:

1. We prohibit hunting of migratory game birds in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting or closed to migratory bird hunting.

2. You may only possess approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit pits and permanent blinds.

4. You may use portable blinds or blinds constructed of natural dead vegetation (see § 27.51 of this chapter).

5. You must remove all decoys, shell casings, portable and temporary blinds, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

6. We prohibit possession or consumption of any alcoholic beverage while hunting (see § 32.2(j)).

7. Hunters may not enter closed areas to retrieve animals legally shot in an open area unless authorization has been given by a refuge employee or State Conservation Officer. Permission must be obtained from private landowners before attempting to retrieve game on private land.

8. Dogs must be leashed and/or under the direct control of a handler (see § 26.21(b) of this chapter). The use of dogs to find and retrieve legally harvested migratory game birds is allowed.

9. Hunters must park in a Designated Hunter Parking Area, as identified by signs.

10. Hunters are required to access and exit the hunting areas from a Designated Hunter Parking Area only. Drop off or pick up of hunters is prohibited except at Hunter Designated Parking Areas.

11. Hunters may only access the refuge 1 hour before legal sunrise until 1 hour after legal sunset.

B. Upland Game Hunting. We allow hunting of blue grouse, ruffed grouse, chuckar partridge, gray partridge, cottontail rabbits, snowshoe hares, squirrels (red, gray, and fox), red fox, raccoon, and striped skunk in accordance with State regulations and subject to the following conditions:

1. Conditions A2 through A7 and A9 through A11 apply.

2. We prohibit hunting of upland game species in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. Dogs must be leashed and/or under the direct control of a handler. The use of dogs to find and retrieve legally harvested upland game birds, cottontail rabbits, and squirrels is allowed and encouraged. Dogs may not be used to chase red fox, raccoon, striped skunk, or any other species not specifically allowed in A8 or this paragraph.

4. Red fox, raccoon, and striped skunk may be taken on the refuge by licensed migratory bird, big game, or upland/small game hunters from September 1 until the end of the last open big game, upland bird, or small game season. Red fox, raccoon, or striped skunk that is harvested must be taken into possession and removed from the refuge.

5. We prohibit hunting of sage grouse.

C. Big Game Hunting. We allow hunting of elk, mule deer, white-tailed deer, pronghorn, and moose in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A7 and A9 through A11 apply.

2. We prohibit hunting of big game in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. You may hunt with the aid of a temporary tree stand that does not require drilling or nailing into the tree. All personal property, including temporary tree stands, must be removed at the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [RESERVED]

* * * * *

Dated: March 4, 2014.

Michael Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks Principal Deputy.

[FR Doc. 2014–05214 Filed 3–14–14; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 51 March 17, 2014

Part IV

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2010–BT–STD–0037]

RIN 1904–AC39

Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers

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

ACTION: Notice of proposed rulemaking and 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 automatic commercial ice makers (ACIM). 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 automatic commercial ice makers. The notice of proposed rulemaking also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than May 16, 2014. See section VII, ''Public Participation,'' for details.

DOE will hold a public meeting on Monday, April 14, 2014, from 9 a.m. to 4 p.m., in Washington, DC. 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.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Persons can attend the public meeting via webinar. For more information, refer to section VII, ''Public Participation.''

Any comments submitted must identify the NOPR for Energy Conservation Standards for Automatic Commercial Ice Makers and provide docket number EERE–2010–BT–STD–0037 and/or regulatory information number (RIN) 1904–AC39. 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: ACIM-2010-STD-0037@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, 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 above and by email to *Chad_S_Whiteman@omb.eop.gov*.

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 regulations.gov. All documents in the docket are listed in the 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.

The link to the docket Web page is the following: *www.regulations.gov/#!docketBrowser;rpp=25;po=0;D=EERE-2010-BT-STD-0037*. This Web page will contain a link to the docket for this proposed rule on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VII for further information on how to submit comments through *www.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: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *automatic_commercial_ice_makers@ee.doe.gov*.

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Ari.Altman@hq.doe.gov*.

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3. Baseline Efficiency
4. Screening Analysis
DOE considered whether design options were technologically feasible; practicable to manufacture, install, or service; had adverse impacts on product utility or product availability; or had adverse impacts on health or safety. See Section IV.C of today's NOPR and chapter 4 of the NOPR TSD for further discussion of the screening analysis.
5. Maximum Technologically Feasible Levels
DOE seeks comments on the Maximum Technologically Feasible levels proposed in Table III.2 and Table III.3 of today's notice. More discussion on this topic can be found in Section IV.D.2.e of today's NOPR.
6. Markups To Determine Price
7. Equipment Life
8. Installation Costs
9. Open- Versus Closed-Loop Installations
10. Ice Maker Shipments by Type of Equipment
11. Intermittency of Manufacturer R&D and Impact of Standards
12. INPV Results and Impact of Standards
13. Small Businesses
14. Consumer Utility and Performance
15. Analysis Period
16. Social Cost of Carbon
17. Remote to Rack Equipment
18. Design Options Associated With Each TSL
19. Standard Levels for Batch-Type Ice Makers Over 2,500 lbs Ice/24 Hours
VIII. Approval of the Office of the Secretary

I. Summary of the Proposed Rule

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment,[2] which includes the focus of this proposed rule: automatic commercial ice makers.

Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for the covered

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

equipment, such as automatic commercial ice makers, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (3)(B); 6313(d)(4))

In accordance with these and other statutory criteria discussed in this proposed rule, DOE proposes amended conservation standards for automatic commercial ice makers,[3] and new standards for covered equipment not yet subject to energy conservation standards. The proposed standards, which consist of maximum allowable energy usage values per 100 lb of ice production, are shown in Table I.1 and Table I.2. Standards shown on Table I.1 for batch type ice makers represent an amendment to existing standards set for cube type ice makers by EPCA in 42 U.S.C. 6313(d)(1). Table I.1 also shows new standards for cube type ice makers with expanded harvest capacities up to 4,000 pounds of ice per 24 hour period (lb ice/24 hours) and an explicit coverage of other types of batch machines, such as tube type ice makers. Table I.2 provides proposed standards for continuous type ice-making machines, which are not covered by DOE's existing standards. The proposed standards include, for applicable equipment classes, maximum condenser water usage values in gallons per 100 lb of ice production. If adopted, the proposed standards would apply to all equipment manufactured in, or imported into, the United States, beginning 3 years after the publication date of the final rule. (42 U.S.C. 6313(d)(2)(B)(i) and (3)(C)(i))

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR BATCH TYPE AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kilowatt-hours (kWh)/100 lb ice* *	Maximum condenser water use *gal/100 lb ice* **
Ice-Making Head	Water	<500	5.84–0.0041H	200–0.022H
		≥500 and <1,436	3.88–0.0002H	200–0.022H
		≥1,436 and <2,500	3.6	200–0.022H
		≥2,500 and <4,000	3.6	145
Ice-Making Head	Air	<450	7.70–0.0065H	NA
		≥450 and <875	5.17–0.0008H	NA
		≥875 and <2,210	4.5	
		≥2,210 and <2,500	6.89–0.0011H	NA
		≥ 2,500 and <4,000	4.1	
Remote Condensing (but not remote compressor)	Air	<1,000	7.52–0.0032H	NA
	Air	≥1,000 and <4,000	4.3	NA
Remote Condensing and Remote Compressor	Air	<934	7.52–0.0032H	NA
	Air	≥934 and <4,000	4.5	NA
Self-Contained	Water	<200	8.55–0.0143H	191–0.0315H
		≥200 and <2,500	5.7	191–0.0315H
		≥2,500 and <4,000	5.7	112
Self-Contained	Air	<175	12.6–0.0328H	NA
		≥175 and <4,000	6.9	NA

* H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate. Source: 42 U.S.C. 6313(d).
** Water use is for the condenser only and does not include potable water used to make ice.

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONTINUOUS TYPE AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice* *	Maximum condenser water use *gal/100 lb ice* **
Ice-Making Head	Water	<900	6.08–0.0025H	160–0.0176H
		≥900 and <2,500	3.8	160–0.0176H
		≥2,500 and <4,000	3.8	116
Ice-Making Head	Air	<700	9.24–0.0061H	NA
		≥700 and <4,000	5.0	NA
Remote Condensing (but not remote compressor)	Air	<850	7.5–0.0034H	NA
		≥850 and <4,000	4.6	NA
Remote Condensing and Remote Compressor	Air	<850	7.65–0.0034H	NA
		≥850 and <4,000	4.8	NA
Self-Contained	Water	<900	7.28–0.0027H	153–0.0252H
		≥900 and <2,500	4.9	153–0.0252H
		≥2,500 and <4,000	4.9	90
Self-Contained	Air	<700	9.2–0.0050H	NA

[3] EPCA as amended by the Energy Policy Act of 2005 (EPACT 2005) established maximum energy use and maximum condenser water use standards for cube type automatic commercial ice makers with harvest capacities between 50 and 2,500 lb/24 hours. In this rulemaking, DOE proposes amending the legislated energy use standards for these automatic commercial ice maker types. DOE did not, however, consider amendment to the existing condenser water use standards for equipment with existing condenser water standards. In the preliminary TSD, DOE indicated that the ice maker standards primarily focus on energy use, and that DOE is not bound by EPCA to evaluate reductions in the condenser water use in automatic commercial ice makers, and may in fact consider increases in condenser water use, if this is a cost-effective way to improve energy efficiency. Section 0 of today's NOPR contains more information on DOE's analysis of condenser water use.

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR CONTINUOUS TYPE AUTOMATIC COMMERCIAL ICE MAKERS—Continued

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice* *	Maximum condenser water use *gal/100 lb ice* **
		≥700 and <4,000	5.7	NA

* H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate. Source: 42 U.S.C. 6313(d).
** Water use is for the condenser only and does not include potable water used to make ice.

A. Benefits and Costs to Customers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed standards on customers of automatic commercial ice makers, as measured by the average life-cycle cost (LCC) savings [4] and the median payback period (PBP).[5] The average LCC savings are positive for all equipment classes under the standards proposed by DOE.

TABLE I.3—IMPACTS OF PROPOSED STANDARDS ON CUSTOMERS OF AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class *	Average LCC savings *2012$*	Median PBP *years*
IMH–W–Small–B	328	2.27
IMH–W–Med–B	587	0.85
IMH–W–Large–B **	833	0.69
IMH–W–Large–B–1	701	0.72
IMH–W–Large–B–2	1,260	0.58
IMH–A–Small–B	396	1.42
IMH–A–Large–B **	1,127	0.84
IMH–A–Large–B–1	1,168	0.82
IMH–A–Large–B–2	908	0.94
RCU–Large–B **	983	0.65
RCU–Large–B–1	963	0.62
RCU–Large–B–2	1,277	1.00
SCU–W–Large–B	694	1.00
SCU–A–Small–B	396	1.56
SCU–A–Large–B	502	1.49
IMH–A–Small–C	391	0.97
IMH–A–Large–C	1,026	0.69
SCU–A–Small–C	146	1.85

* Abbreviations are: IMH is ice-making head; RCU is remote condensing unit; SCU is self-contained unit; W is water-cooled; A is air-cooled; Small refers to the lowest harvest category; Med refers to the Medium category (water-cooled IMH only); RCU with and without remote compressor were modeled as one group. For three large batch categories, a machine at the low end of the harvest range (B–1) and a machine at the higher end (B–2) were modeled. Values are shown only for equipment classes that have significant volume of shipments and, therefore, were directly analyzed. See chapter 5 of the NOPR technical support document, ''Engineering Analysis,'' for a detailed discussion of equipment classes analyzed.
** LCC savings and PBP results for these classes are weighted averages of the typical units modeled for the large classes, using weights provided in TSD chapter 7.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the present year (2013) through the end of the analysis period (2047). Using a real discount rate of 9.2 percent, DOE estimates that the INPV for manufacturers of automatic commercial ice makers is $101.8 million in 2012$. Under the proposed standards, DOE expects that manufacturers may lose up to 23.5 percent of their INPV, or approximately $23.9 million. Based on DOE's interviews with the manufacturers of automatic commercial ice makers, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits

DOE's analyses indicate that the proposed standards for automatic commercial ice makers would save a significant amount of energy. The lifetime savings for equipment purchased in the 30-year period that begins in the year of compliance with amended and new standards (2018–2047) [6] amount to 0.286 quadrillion British thermal units (quads) of cumulative energy.

The cumulative national net present value (NPV) of total customer savings of the proposed standards for automatic commercial ice makers in 2012$ ranges from $0.791 billion (at a 7-percent

[4] Life-cycle cost of automatic commercial ice makers is the cost to customers of owning and operating the equipment over the entire life of the equipment. Life-cycle cost savings are the reductions in the life-cycle costs due to the amended energy conservation standards when compared to the life-cycle costs of the equipment in the absence of the amended energy conservation standards.

[5] Payback period refers to the amount of time (in years) it takes customers to recover the increased installed cost of equipment associated with new or amended standards through savings in operating costs.

[6] The standards analysis period for national benefits covers the 30-year period, plus the life of equipment purchased during the period. In the past DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

discount rate) to $1.751 billion (at a 3-percent discount rate [7]). This NPV expresses the estimated total value of future operating cost savings minus the estimated increased installed costs for equipment purchased in the period from 2018–2047, discounted to 2013.

In addition, the proposed standards are expected to have significant environmental benefits. The energy savings would result in cumulative emission reductions of 14.6 million metric tons (MMt) [8] of carbon dioxide (CO_2), 8.7 thousand tons of nitrogen oxides (NO_X), 0.3 thousand tons of nitrous oxide (N_2O), 75.8 thousand tons of methane (CH_4) and 0.02 tons of mercury (Hg),[9] and 21 thousand tons of sulfur dioxide (SO_2) based on energy savings from equipment purchased over the period from 2018–2047.[10]

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed and recently updated by an interagency process.[11] The derivation of the SCC value is discussed in section IV.L. DOE estimates the net present monetary value of the CO_2 emissions reduction is between $0.102 and $1.426 billion, expressed in 2012$ and discounted to 2013. DOE also estimates the net present monetary value of the NO_X emissions reduction, expressed in 2012$ and discounted to 2013, is between $0.54 and $5.53 million at a 7-percent discount rate, and between $1.71 and $17.56 million at a 3-percent discount rate.[12]

Table I.4 summarizes the national economic costs and benefits expected to result from today's proposed standards for automatic commercial ice makers.

TABLE I.4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED AUTOMATIC COMMERCIAL ICE MAKER CONSERVATION STANDARDS

Category	Present value *million 2012$*	Discount rate (percent)
Benefits		
Operating Cost Savings	982	7
	2,114	3
CO_2 Reduction Monetized Value ($11.8/t case) *	102	5
CO_2 Reduction Monetized Value ($39.7/t case) *	463	3
CO_2 Reduction Monetized Value ($61.2/t case) *	733	2.5
CO_2 Reduction Monetized Value ($117/t case) *	1,426	3
NO_X Reduction Monetized Value ($2,639/t case) **	3	7
	10	3
Total Benefits †, ††	1,448	7
	2,587	3
Costs		
Incremental Installed Costs	191	7
	364	3
Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value	1,257	7
	2,223	3

* The CO_2 values represent global monetized values of the SCC, in 2012$, in year 2015 under several scenarios of the updated SCC values. The values of $11.8, $39.7, and $61.2 per metric ton (t) are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $117.0/t represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC time series used by DOE incorporate an escalation factor.

** The value represents the average of the low and high NO_X values used in DOE's analysis.

† Total Benefits for both the 3-percent and the 7-percent cases are derived using the series corresponding to SCC value of $39.7/t.

†† DOE estimates reductions in sulfur dioxide, mercury, methane and nitrous oxide emissions, but is not currently monetizing these reductions. Thus, these impacts are excluded from the total benefits.

The benefits and costs of today's proposed standards, for automatic commercial ice makers sold in 2018–2047, 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 the operation of equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in equipment installed cost, which is another way of representing customer NPV); and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[13]

[7] These discount rates are used in accordance with the Office of Management and Budget (OMB) guidance to Federal agencies on the development of regulatory analysis (OMB Circular A–4, September 17, 2003), and section E, ''Identifying and Measuring Benefits and Costs,'' therein. Further details are provided in section 0.

[8] A metric ton is equivalent to 1.1 U.S. short tons. Results for NO_X, Hg, and SO_2 are presented in short tons.

[9] DOE calculates emissions reductions relative to the *Annual Energy Outlook 2013* (*AEO2013*) Reference Case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of December 31, 2012.

[10] DOE also estimated CO_2 and CO_2 equivalent (CO_2eq) emissions that occur through 2030 (CO_2eq includes greenhouse gases such as CH_4 and N_2O). The estimated emissions reductions through 2030 are 5.8 million metric tons CO_2, 576 thousand tons CO_2eq for CH_4, and 25 thousand tons CO_2eq for N_2O.

[11] *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

[12] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

[13] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2013, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.5. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2018 through 2047) that yields the same

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. customer 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 CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured over the lifetimes of automatic commercial ice makers shipped from 2018 to 2047. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of 1 ton of CO_2 in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.5. (All monetary values below are expressed in 2012$.) Table I.5 shows the primary, low net benefits, and high net benefits scenarios. The primary estimate is the estimate in which the operating cost savings were calculated using the *Annual Energy Outlook 2013* (*AEO2013*) Reference Case forecast of future electricity prices. The low net benefits estimate and the high net benefits estimate are based on the low and high electricity price scenarios from the *AEO2013* forecast, respectively.[14] Using a 7-percent discount rate for benefits and costs, the cost in the primary estimate of the standards proposed in this rule is $20 million per year in increased equipment costs. (Note that DOE used a 3-percent discount rate along with the corresponding SCC series value of $39.7/ton in 2012$ to calculate the monetized value of CO_2 emissions reductions.) The annualized benefits are $104 million per year in reduced equipment operating costs, $27 million in CO_2 reductions, and $0.32 million in reduced NO_X emissions. In this case, the annualized net benefit amounts to $110 million. At a 3-percent discount rate for all benefits and costs, the cost in the primary estimate of the amended standards proposed in this notice is $21 million per year in increased equipment costs. The benefits are $121 million per year in reduced operating costs, $27 million in CO_2 reductions, and $0.55 million in reduced NO_X emissions. In this case, the net benefit amounts to $128 million per year.

DOE also calculated the low net benefits and high net benefits estimates by calculating the operating cost savings and shipments at the *AEO2013* low economic growth case and high economic growth case scenarios, respectively. The low and high benefits for incremental installed costs were derived using the low and high price learning scenarios. The net benefits and costs for low and high net benefits estimates were calculated in the same manner as the primary estimate by using the corresponding values of operating cost savings and incremental installed costs.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

	Discount rate (percent)	Primary estimate * *million 2012$*	Low net benefits estimate * *million 2012$*	High net benefits estimate * *million 2012$*
Benefits				
Operating Cost Savings	7	104	98	112
	3	121	113	132
CO_2 Reduction Monetized Value ($11.8/t case) **	5	8	8	8
CO_2 Reduction Monetized Value ($39.7/t case) **	3	27	26	27
CO_2 Reduction Monetized Value ($61.2/t case) **	2.5	39	38	40
CO_2 Reduction Monetized Value ($117/t case) **	3	82	80	84
NO_X Reduction Monetized Value (at $2,639/t case) **	7	0.32	0.31	0.33
	3	0.55	0.53	0.58
Total Benefits (Operating Cost Savings, CO_2 Reduction and NO_X Reduction) †	7	131	124	139
	3	149	139	160
Costs				
Total Incremental Installed Costs	7	20	21	20
	3	21	22	20
Net Benefits Less Costs				
Total Benefits Less Incremental Costs	7	110	103	120
	3	128	118	140

* The primary, low, and high estimates utilize forecasts of energy prices from the *AEO2013* Reference Case, Low Economic Growth Case, and High Economic Growth Case, respectively.

** The CO_2 values represent global monetized values of the SCC, in 2012$, in 2015 under several scenarios of the updated SCC values. The values of $11.8, $39.7, and $61.2 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $117.0 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. See section IV.L for details. For NO_X, an average value ($2,639) of the low ($468) and high ($4,809) values was used.

† Total monetary benefits for both the 3-percent and 7-percent cases utilize the central estimate of social cost of NO_X and CO_2 emissions calculated at a 3-percent discount rate (averaged across three integrated assessment models) , which is equal to $39.7/ton (in 2012$).

present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined is a steady stream of payments.

[14] The *AEO2013* scenarios used are the ''High Economics'' and ''Low Economics'' scenarios.

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 significant conservation of energy (42 U.S.C. 6295(o)(2)(B) and 6313(d)(4)) DOE further notes that technologies used to achieve these standard levels are already commercially available for the equipment classes covered by this notice. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of customer benefits, customer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some customers).

DOE also considered more-stringent energy use levels as trial standard levels (TSLs), and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy use levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this proposed rule and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy use levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of standards for automatic commercial ice makers.

A. Authority

Title III, Part C of EPCA,[15] Public Law 94–163 (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the subject of this rulemaking: Automatic commercial ice makers.[16]

EPCA prescribed energy conservation standards for automatic commercial ice makers that produce cube type ice with capacities between 50 and 2,500 lb ice/24 hours. (42 U.S.C. 6313(d)(1)) EPCA requires DOE to review these standards and determine, by January 1, 2015, whether amending the applicable standards is technically feasible and economically justified. (42 U.S.C. 6313(d)(3)(A)) If amended standards are technically feasible and economically justified, DOE must issue a final rule by the same date. (42 U.S.C. 6313(d)(3)(B)) Additionally, EPCA granted DOE the authority to conduct rulemakings to establish new standards for automatic commercial ice makers not covered by 42 U.S.C. 6313(d)(1)), and DOE is using that authority in this rulemaking. (42 U.S.C. 6313(d)(2)(A))

Pursuant to EPCA, DOE's energy conservation program for covered equipment generally consists of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. 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 type or class of covered equipment. (42 U.S.C. 6314) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA. Similarly, DOE must use these test procedures to determine whether that equipment complies with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) Manufacturers, when making representations to the public regarding the energy use or efficiency of that equipment, must use the prescribed DOE test procedure as the basis for such representations. (42 U.S.C. 6314(d)) The DOE test procedures for automatic commercial ice makers currently appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart H.

DOE must follow specific statutory criteria for prescribing amended standards for covered equipment. As indicated above, any amended standard for covered equipment 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) and 6313(d)(4)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6313(d)(4)) DOE also may not prescribe a standard: (1) For certain industrial equipment, including automatic commercial ice makers, if no test procedure has been established for the product; or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B) and 6313(d)(4)) 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) and 6313(d)(4)) 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 equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment 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 equipment likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the U.S. Attorney General (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)–(VII) and 6313(d)(4))

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 covered equipment. (42 U.S.C. 6295(o)(1) and 6313(d)(4)) 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. (42 U.S.C. 6295(o)(4) and 6313(d)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified

[15] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[16] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

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 savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (*See* 42 U.S.C. 6295(o)(2)(B)(iii) and 6313(d)(4)) Section III.E.2 presents additional discussion about rebuttable presumption payback period (RPBP).

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered equipment. DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of covered products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature that other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must 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)–(c) and 6316(f)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d) and 6316(f).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3821 (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. 58 FR 51735 (Oct. 4, 1993). 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. 76 FR 3821 (Jan. 21, 2011).

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, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. 76 FR 3821 (Jan. 21, 2011). 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.

Consistent with Executive Order 13563, and the range of impacts analyzed in this rulemaking, the standards proposed herein by DOE achieves maximum net benefits.

B. Background

1. Current Standards

In a final rule published on October 18, 2005, DOE adopted the energy conservation standards and water conservation standards prescribed by EPCA in 42 U.S.C. 6313(d)(1) for certain automatic commercial ice makers manufactured on or after January 1, 2010. 70 FR at 60407, 60415–16. These standards consist of maximum energy use and maximum condenser water use to produce 100 pounds of ice for automatic commercial ice makers with harvest rates between 50 and 2,500 lb ice/24 hours. These standards appear at 10 CFR part 431, subpart H, Automatic Commercial Ice Makers. Table II.1 presents DOE's current energy conservation standards for automatic commercial ice makers.

TABLE II.1—AUTOMATIC COMMERCIAL ICE MAKERS STANDARDS PRESCRIBED BY EPCA—COMPLIANCE REQUIRED BEGINNING ON JANUARY 1, 2010

Equipment type	Type of cooling	Harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice*	Maximum condenser water use * *gal/100 lb ice*
Ice-Making Head	Water	<500	7.8–0.0055H **	200–0.022H.**
		≥500 and <1,436	5.58–0.0011H	200–0.022H.
		≥1,436	4.0	200–0.022H.
	Air	<450	10.26–0.0086H	Not Applicable.
		≥450	6.89–0.0011H	Not Applicable.
Remote Condensing (but not remote compressor)	Air	<1,000	8.85–0.0038H	Not Applicable.
		≥1,000	5.10	Not Applicable.
Remote Condensing and Remote Compressor	Air	<934	8.85–0.0038H	Not Applicable.
		≥934	5.30	Not Applicable.
Self-Contained	Water	<200	11.4–0.019H	191–0.0315H.
		≥200	7.60	191–0.0315H.
	Air	<175	18.0–0.0469H	Not Applicable.
		≥175	9.80	Not Applicable.

Source: 42 U.S.C. 6313(d).

* Water use is for the condenser only and does not include potable water used to make ice.

** H = harvest rate in pounds per 24 hours, indicating the water or energy use for a given harvest rate.

2. History of Standards Rulemaking for Automatic Commercial Ice Makers

As stated above, EPCA prescribes energy conservation standards and water conservation standards for certain cube type automatic commercial ice makers with harvest rates between 50 and 2,500 lb ice/24 hours: Self-contained ice makers and ice-making heads (IMHs) using air or water for cooling and ice makers with remote condensing with or without a remote compressor. Compliance with these standards was required as of January 1, 2010. (42 U.S.C. 6313(d)(1)) DOE adopted these standards and placed them under 10 CFR part 431, subpart H, Automatic Commercial Ice Makers.

In addition, EPCA requires DOE to conduct a rulemaking to determine whether to amend the standards established under 42 U.S.C. 6313(d)(1), and if DOE determines that amendment is warranted, DOE must also issue a final rule establishing such amended standards by January 1, 2015. (42 U.S.C. 6313(d)(3)(A))

Furthermore, EPCA granted DOE authority to set standards for additional types of automatic commercial ice makers that are not covered in 42 U.S.C. 6313(d)(1). (42 U.S.C. 6313(d)(2)(A)) While not enumerated in EPCA, additional types of automatic commercial ice makers DOE identified as candidates for standards to be established in this rulemaking include flake and nugget, as well as batch type ice makers that are not included in the EPCA definition of cube type ice makers.

To satisfy its requirement to conduct a rulemaking, DOE initiated the current rulemaking on November 4, 2010 by publishing on its Web site its ''Rulemaking Framework for Automatic Commercial Ice Makers.'' (The Framework document is available at: *www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0037-0024*.)

DOE also published a notice in the **Federal Register** announcing the availability of the Framework document, as well as a public meeting to discuss the document. The notice also solicited comment on the matters raised in the document. 75 FR 70852 (Nov. 19, 2010). The Framework document described the procedural and analytical approaches that DOE anticipated using to evaluate amended standards for automatic commercial ice makers, and identified various issues to be resolved in the rulemaking.

DOE held the Framework public meeting on December 16, 2010, at which it: (1) Presented the contents of the Framework document; (2) described the analyses it planned to conduct during the rulemaking; (3) sought comments from interested parties on these subjects; and (4) in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Major issues discussed at the public meeting included: (1) The scope of coverage for the rulemaking; (2) equipment classes; (3) analytical approaches and methods used in the rulemaking; (4) impacts of standards and burden on manufacturers; (5) technology options; (6) distribution channels, shipments, and end users; (7) impacts of outside regulations; and (8) environmental issues. At the meeting and during the comment period on the Framework document, DOE received many comments that helped it identify and resolve issues pertaining to automatic commercial ice makers relevant to this rulemaking. These comments are discussed in subsequent sections of this notice.

DOE then gathered additional information and performed preliminary analyses to help review standards for this equipment. This process culminated in DOE publishing a notice of another public meeting (the January 2012 notice) to discuss and receive comments regarding the tools and methods DOE used in performing its preliminary analysis, as well as the analyses results. 77 FR 3404 (Jan. 24, 2012). DOE also invited written comments on these subjects and announced the availability on its Web site of a preliminary analysis technical support document (preliminary analysis TSD). *Id.* (The preliminary analysis TSD is available at: *www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0037-0026*.) Finally, DOE sought comments concerning other relevant issues that could affect amended standards for automatic commercial ice makers, or that DOE should address in this NOPR. *Id.*

The preliminary analysis TSD provided an overview of DOE's review of the standards for automatic commercial ice makers, discussed the comments DOE received in response to the Framework document, and addressed issues including the scope of coverage of the rulemaking. The document also described the analytical framework that DOE used (and continues to use) in considering amended standards for automatic commercial ice makers, including a description of the methodology, the analytical tools, and the relationships between the various analyses that are part of this rulemaking. Additionally, the preliminary analysis TSD presented in detail each analysis that DOE had performed for this equipment up to that point, including descriptions of inputs, sources, methodologies, and results. These analyses were as follows:

- A *market and technology assessment* addressed the scope of this rulemaking, identified existing and potential new equipment classes for automatic commercial ice makers, characterized the markets for this equipment, and reviewed techniques and approaches for improving its efficiency;
- A *screening analysis* reviewed technology options to improve the efficiency of automatic commercial ice makers, and weighed these options against DOE's four prescribed screening criteria;
- An *engineering analysis* estimated the manufacturer selling prices (MSPs) associated with more energy-efficient automatic commercial ice makers;
- An *energy and water use analysis* developed the annual energy and water usage values for economic analysis of automatic commercial ice makers;
- A *markups analysis* converted estimated MSPs derived from the engineering analysis to customer purchase prices;
- A *life-cycle cost analysis* calculated, for individual customers, the discounted savings in operating costs throughout the estimated average life of automatic commercial ice makers, compared to any increase in installed costs likely to result directly from the imposition of a given standard;
- A *payback period analysis* estimated the amount of time it would take customers to recover the higher purchase price of more energy-efficient equipment through lower operating costs;
- A *shipments analysis* estimated shipments of automatic commercial ice makers over the time period examined in the analysis;
- A *national impact analysis* (NIA) assessed the national energy savings (NES), and the national NPV of total customer costs and savings, expected to result from specific, potential energy conservation standards for automatic commercial ice makers; and
- A *preliminary manufacturer impact analysis* (MIA) took the initial steps in evaluating the potential effects on

manufacturers of amended efficiency standards.

The public meeting announced in the January 2012 notice took place on February 16, 2012 (February 2012 preliminary analysis public meeting). At the February 2012 preliminary analysis public meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary analysis TSD. Interested parties provided comments on the following issues: (1) Equipment classes; (2) technology options; (3) energy modeling and validation of engineering models; (4) cost modeling; (5) market information, including distribution channels and distribution markups; (6) efficiency levels; (7) life-cycle costs to customers, including installation, repair and maintenance costs, and water and wastewater prices; and (8) historical shipments. The comments received since publication of the January 2012 notice, including those received at the February 2012 preliminary analysis public meeting, have contributed to DOE's proposed resolution of the issues in this rulemaking as they pertain to automatic commercial ice makers. This NOPR responds to the issues raised by the comments. (A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.)

III. General Discussion

A. List of Equipment Class Abbreviations

In this notice, equipment class names are frequently abbreviated. The abbreviations are shown on Table III.1.

TABLE III.1—LIST OF EQUIPMENT CLASS ABBREVIATIONS

Abbreviation	Equipment type	Condenser type	Rated harvest rate *lb ice/24 hours*	Ice type
IMH–W–Small–B	Ice-Making Head	Water	<500	Batch.
IMH–W–Med–B	Ice-Making Head	Water	≥500 and <1,436	Batch.
IMH–W–Large–B *	Ice-Making Head	Water	≥1,436 and <4,000	Batch.
IMH–A–Small–B	Ice-Making Head	Air	<450	Batch.
IMH–A–Large–B* ** (also IMH–A–Large–B–1).	Ice-Making Head	Air	≥450 and <875	Batch.
IMH–A–Extended–B* ** (also IMH–A–Large–B–2).	Ice-Making Head	Air	≥875 and <4,000	Batch.
RCU–NRC–Small–B	Remote Condensing, not Remote Compressor.	Air	<1,000	Batch.
RCU–NRC–Large–B*	Remote Condensing, not Remote Compressor.	Air	≥1,000 and <4,000	Batch.
RCU–RC–Small–B	Remote Condensing, and Remote Compressor.	Air	<934	Batch.
RCU–RC–Large–B	Remote Condensing, and Remote Compressor.	Air	≥934 and <4,000	Batch.
SCU–W–Small–B	Self-Contained Unit	Water	<200	Batch.
SCU–W–Large–B	Self-Contained Unit	Water	≥200 and <4,000	Batch.
SCU–A–Small–B	Self-Contained Unit	Air	<175	Batch.
SCU–A–Large–B	Self-Contained Unit	Air	≥175 and <4,000	Batch.
IMH–W–Small–C	Ice-Making Head	Water	<900	Continuous.
IMH–W–Large–C	Ice-Making Head	Water	≥900 and <4,000	Continuous.
IMH–A–Small–C	Ice-Making Head	Air	<700	Continuous.
IMH–A–Large–C	Ice-Making Head	Air	≥700 and <4,000	Continuous.
RCU–NRC–Small–C	Remote Condensing, not Remote Compressor.	Air	<850	Continuous.
RCU–NRC–Large–C	Remote Condensing, not Remote Compressor.	Air	≥850 and <4,000	Continuous.
RCU–RC–Small–C	Remote Condensing, and Remote Compressor.	Air	<850	Continuous.
RCU–RC–Large–C	Remote Condensing, and Remote Compressor.	Air	≥850 and <4,000	Continuous.
SCU–W–Small–C	Self-Contained Unit	Water	<900	Continuous.
SCU–W–Large–C	Self-Contained Unit	Water	≥900 and <4,000	Continuous.
SCU–A-Small-C	Self-Contained Unit	Air	<700	Continuous.
SCU–A–Large–C	Self-Contained Unit	Air	≥700 and <4,000	Continuous.

* IMH–W–Large–B, IMH–A–Large–B, and RCU–NRC–Large–B were modeled in some NOPR analyses as two different units, one at the lower end of the rated harvest range and one near the high end of the rated harvest range in which a significant number of units are available. In the LCC and NIA models, the low and high harvest rate models were denoted simply as B–1 and B–2. Where appropriate, the analyses add or perform weighted averages of the two typical sizes to present class level results.

** IMH–A–Large–B was established by EPACT–2005 as a class between 450 and 2,500 lb ice/24 hours. In this notice, DOE is proposing to divide this into two classes, which could either be considered ''Large'' and ''Very Large'' or ''Medium'' and ''Large.'' In the LCC and NIA modeling, this was denoted as B–1 and B–2. The rated harvest rate break point shown above is based on TSL 3 results.

B. Test Procedures

On December 8, 2006, DOE published a final rule in which it adopted Air-Conditioning and Refrigeration Institute (ARI) Standard 810–2003, ''Performance Rating of Automatic Commercial Ice Makers,'' with a revised method for calculating energy use, as the DOE test procedure for this equipment. The DOE rule included a clarification to the energy use rate equation to specify that the energy use be calculated using the entire mass of ice produced during the testing period, normalized to 100 lb of ice produced. 71 FR 71340, 71350 (Dec. 8, 2006). ARI Standard 810–2003 requires performance tests to be conducted according to the American National Standards Institute (ANSI)/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 29–1988 (reaffirmed 2005), ''Method of Testing

Automatic Ice Makers.'' The DOE test procedure incorporated by reference the ANSI/ASHRAE Standard 29–1988 (Reaffirmed 2005) as the method of test.

On January 11, 2012, DOE published a test procedure final rule (2012 test procedure final rule) in which it adopted several amendments to the DOE test procedure. This included an amendment to incorporate by reference Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 810–2007, which amends ARI Standard 810–2003 to expand the capacity range of covered equipment, provide definitions and specific test procedures for batch and continuous type ice makers, and provide a definition for ice hardness factor, as the DOE test procedure for this equipment. 77 FR 1591 (Jan. 11, 2012). In March 2011, AHRI published Addendum 1 to Standard 810–2007, which revised the definition of ''potable water use rate'' and added new definitions for ''purge or dump water'' and ''harvest water.'' DOE's 2012 test procedure final rule incorporated this addendum to the AHRI Standard. The 2012 test procedure final rule also included an amendment to incorporate by reference the updated ANSI/ASHRAE Standard 29–2009. *Id.*

In addition, the 2012 test procedure final rule included several amendments designed to address issues that were not accounted for by the previous DOE test procedure. 77 FR at 1593 (Jan. 11, 2012). First, DOE expanded the scope of the test procedure to include equipment with capacities from 50 to 4,000 lb ice/24 hours.[17] DOE also adopted amendments to provide test methods for continuous type ice makers and to standardize the measurement of energy and water use for continuous type ice makers with respect to ice hardness. In the 2012 test procedure final rule, DOE also clarified the test method and reporting requirements for remote condensing automatic commercial ice makers designed for connection to remote compressor racks. Finally, the 2012 test procedure final rule discontinued the use of the clarified energy use rate calculation and instead required energy-use to be calculated per 100 lb of ice as specified in ANSI/ASHRAE Standard 29–2009. The 2012 test procedure final rule became effective on February 10, 2012, and the changes set forth in the final rule became mandatory for equipment testing starting January 7, 2013. 77 FR at 1593 (Jan. 11, 2012).

The test procedure amendments established in the 2012 test procedure final rule are required to be used in conjunction with any new standards promulgated as a result of this standards rulemaking. Use of the amended test procedure to demonstrate compliance with DOE energy conservation standards or for representations with respect to energy consumption of automatic commercial ice makers is required on the compliance date of any energy conservation standards established as part of this rulemaking, and on January 7, 2013 for the energy conservation standards set in the Energy Policy Act of 2005 (EPACT 2005). 77 FR at 1593 (Jan. 11, 2012).

C. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis, which it bases on information that it has gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such analysis, DOE develops a list of design options for consideration, in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of these options for improving efficiency are technologically feasible. DOE considers a design option to be technologically feasible if it is used by the relevant industry or if a working prototype has been developed. Technologies incorporated in commercially available equipment or in working prototypes will be considered technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i) Although DOE considers technologies that are proprietary, it will not consider efficiency levels that can only be reached through the use of proprietary technologies (*i.e.,* a unique pathway), which could allow a single manufacturer to monopolize or control the market.

Once DOE has determined that particular design options are technologically feasible, it further evaluates each of these design options in light of the following additional screening criteria: (1) Practicability to manufacture, install, or 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)–(iv) Chapter 4 of the NOPR TSD discusses the results of the screening analyses for automatic commercial ice makers. Specifically, it presents the designs DOE considered, those it screened out, and those that are the bases for the TSLs in this rulemaking.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt (or not adopt) an amended or new energy conservation standard for a type or class of covered equipment such as automatic commercial ice makers, it determines the maximum improvement in energy efficiency that is technologically feasible for such equipment. (*See* 42 U.S.C. 6295(p)(1) and 6313(d)(4)) Accordingly, in the preliminary analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for automatic commercial ice makers in the engineering analysis using the design parameters that passed the screening analysis. See chapter 5 of the NOPR TSD for the results of the analyses, and a list of technologies included in max-tech equipment.

As indicated previously, whether efficiency levels exist or can be achieved in commonly used equipment is not relevant to whether they are max-tech levels. DOE considers technologies to be technologically feasible if they are incorporated in any currently available equipment or working prototypes. Hence, a max-tech level results from the combination of design options predicted to result in the highest efficiency level possible for an equipment class, with such design options consisting of technologies already incorporated in commercial equipment or working prototypes. DOE notes that it reevaluated the efficiency levels, including the max-tech levels, when it updated its results for this NOPR. Table III.2 and Table III.3 show the max-tech levels determined in the engineering analysis for batch and continuous type automatic commercial ice makers, respectively.

[17] EPCA defines *automatic commercial ice maker* in 42 U.S.C. 6311(19) as ''a factory-made assembly (not necessarily shipped in 1 package) that—(1) Consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice; and (2) May include means for storing ice, dispensing ice, or storing and dispensing ice.'' This definition includes commercial ice-making equipment up to 4,000 lb ice/24 hours, though DOE had not previously established test procedures and standards for units with the capacity between 2,500 and 4,000 lb ice/24 hours. While 42 U.S.C. 6313(d)(1) explicitly sets standards for cube type ice makers up to 2,500 lb ice/24 hours, 6313(d)(2) provides authority to set standards for other equipment types—all of which are covered by the EPCA definition of an automatic commercial ice maker.

TABLE III.2—MAX-TECH LEVELS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type *	Energy use lower than baseline
IMH–W–Small–B	30%.
IMH–W–Med–B	22%.
IMH–W–Large–B	17% (at 1,500 lb ice/24 hours) 16% (at 2,600 lb ice/24 hours).
IMH–A–Small–B	33%.
IMH–A–Large–B	33% (at 800 lb ice/24 hours) 21% (at 1,500 lb ice/24 hours).
RCU–Small–B	Not analyzed—similar to IMH–A.–Large–B (1500).
RCU–Large–B	21% (at 1,500 lb ice/24 hours) 21% (at 2,400 lb ice/24 hours).
SCU–W–Small–B	Not analyzed—similar to SCU–A–Large–B.
SCU–W–Large–B	35%.
SCU–A–Small–B	41%.
SCU–A–Large–B	36%.

* IMH is ice-making head; RCU is remote condensing unit; SCU is self-contained unit; W is water-cooled; A is air-cooled; Small refers to the lowest harvest category; Med refers to the Medium category (water-cooled IMH only); Large refers to the large size category; RCU units were modeled as one with line losses used to distinguish standards.

** For equipment classes that were not analyzed, DOE did not develop specific cost-efficiency curves but attributed the curve (and maximum technology point) from one of the analyzed equipment classes.

TABLE III.3—MAX-TECH LEVELS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Energy use lower than baseline
IMH–W–Small–C	Not analyzed—similar to IMH–A–Large–C (820).
IMH–W–Large–C	Not analyzed at 1,000 lb/day—similar to IMH–A–Large–C (820) Not analyzed at 1,800 lb/day—similar to IMH–A–Large–C (820).
IMH–A–Small–C	25.3%.
IMH–A–Large–C	17% (at 820 lb ice/24 hours) Not analyzed at 1,800 lb/day—similar to IMH–A–Large–C (820).
RCU–Small–C	Not analyzed—similar to IMH–A–Large–C (820).
RCU–Large–C	Not analyzed—similar to IMH–A–Large–C (820).
SCU–W–Small–C	Not analyzed—similar to SCU–A–Small–C.
SCU–W–Large–C *	No units available.
SCU–A–Small–C	24%.
SCU–A–Large–C *	No units available.

* DOE's investigation of equipment on the market revealed that there are no existing products in either of these two equipment classes (as defined in this NOPR).

** For equipment classes that were not analyzed, DOE did not develop specific cost-efficiency curves but attributed the curve (and maximum technology point) from one of the analyzed equipment classes.

D. Energy and Water Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from automatic commercial ice makers purchased in the 30-year period that begins in the year of compliance with amended and new standards (2018–2047). The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption in the absence of amended mandatory efficiency standards, and considers market forces and policies that affect demand for more-efficient equipment.

DOE used its NIA spreadsheet model to estimate energy savings from amended standards for the equipment that are the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in site energy, which is the energy directly consumed by equipment at the locations where they are used.

Because automatic commercial ice makers use water, water savings were quantified in the same way as energy savings.

For electricity, DOE reports national energy savings in terms of the savings in energy that is used to generate and transmit the site electricity. To convert this quantity, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA's) *Annual Energy Outlook.*

DOE has also begun to estimate full-fuel-cycle (FFC) energy savings. 76 FR 51282 (Aug. 18, 2011). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels, and thus presents a more complete picture of the impacts of efficiency standards. DOE's approach is based on calculation of an FFC multiplier for each of the fuels used by covered equipment.

2. Significance of Savings

As noted above, 42 U.S.C. 6295(o)(3)(B) prevents DOE from adopting a standard for a covered product unless such standard would result in ''significant'' energy savings. Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The estimated energy savings in the 30-year analysis period for the TSLs (presented in section V.A) are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

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) and 6313(d)(4)) The following sections generally discuss how DOE is addressing each of those seven factors in this rulemaking. For further details and the results of DOE's

analyses pertaining to economic justification, see sections IV and V of today's rulemaking.

a. Economic Impact on Manufacturers and Commercial Customers

In determining the impacts of an amended standard on manufacturers, 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 INPV, which values the industry on the basis of expected future cash flows; cash flows by year; changes in revenue and income; and 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 a detailed description of the methodology used to assess the economic impact on manufacturers, see section IV.J of this rulemaking. For results, see section V.B.2 of this rulemaking. Additionally, chapter 12 of the NOPR TSD contains a detailed description of the methodology and discussion of the results.

For individual customers,[18] measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, which is specified separately in EPCA as one of the seven factors to be considered in determining the economic justification for a new or amended standard, 42 U.S.C. 6295(o)(2)(B)(i)(II), is discussed in the following section. For customers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. For a description of the methodology used for assessing the economic impact on customers, see sections IV.G and IV.H; for results, see sections V.B.1 and V.B.2 of this rulemaking. Additionally, chapters 8 and 10 and the associated appendices of the NOPR TSD contain a detailed description of the methodology and discussion of the results. For a description of the methodology used to assess the economic impact on manufacturers, see section IV.J; for results, see section V.B.2 of this rulemaking. Additionally, chapter 12 of the NOPR TSD contains a detailed description of the methodology and discussion of the results.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of equipment (including its installation) and the operating costs (including energy, water, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC savings for the considered efficiency levels are calculated relative to a base case that reflects projected market trends in the absence of new or amended standards. The LCC analysis requires a variety of inputs, such as product prices, product energy and water consumption, energy and water prices, maintenance and repair costs, product lifetime, and consumer discount rates. For its analysis, DOE assumes that consumers will purchase the considered equipment in the first year of compliance with amended standards.

To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. DOE identifies the percentage of customers estimated to receive LCC savings, or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of customers that may be affected disproportionately by a national standard. For the results of DOE's analyses related to the LCC, see section V.B.1 of this rulemaking and chapter 8 of the NOPR TSD; for LCC impacts on identifiable subgroups, see section V.B.1 of this notice and chapter 11 of the NOPR TSD.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, 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) and 6313(d)(4)) As discussed in section VI.B.3, DOE uses the NIA spreadsheet to project energy savings.

d. Lessening of Utility or Performance of Equipment

In establishing classes of equipment, and in evaluating design options and the impact of potential standard levels, DOE evaluates standards that would not lessen the utility or performance of the equipment under consideration. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6313(d)(4)) The standards proposed in today's rulemaking will not reduce the utility or performance of the equipment considered in the rulemaking. For DOE's analyses related to the potential impact of amended standards on equipment utility and performance, see section V.B.4 of this rulemaking and chapter 4 of the NOPR TSD.

e. 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 the imposition of a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It directs the Attorney General to make such determination, if any, of any lessening of competition likely to result from a proposed standard, and to transmit such 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 transmit a copy of today's proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will address the Attorney General's determination in the final rule.

f. Need of the Nation To Conserve Energy

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 also may 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. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(e)(1))

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (GHGs) associated with energy production. DOE reports the emissions impacts from today's standards, and from each TSL it considered, in sections IV.K, IV.L and V.B.6 of this rulemaking. DOE also

[18] Customers, or consumers, in the case of commercial and industrial equipment, are considered to be the businesses that purchase or lease the equipment or may be responsible for the cost of operating the equipment.

reports estimates of the economic value of emissions reductions resulting from the considered TSLs.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a new or amended 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) and 6316(e)(1)) In developing this proposed rule, DOE has also considered the comments submitted by interested parties. For the results of DOE's analyses related to other factors, see section V.B.7 of this rulemaking.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii) and 6313(d)(4), EPCA provides for a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the customer of equipment that meets the new or amended standard level 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 analysis generates values used to calculate the effects that proposed energy conservation standards would have on the PBP for customers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to the customer, manufacturer, the Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6313(d)(4). The results of these analyses serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.G.12 of this rulemaking and chapter 8 of the NOPR TSD.

IV. Methodology and Discussion of Comments

A. General Rulemaking Issues

During the February 2012 preliminary analysis public meeting and in subsequent written comments, stakeholders provided input regarding general issues pertinent to the rulemaking, such as issues of scope of coverage and DOE's authority in setting standards. These issues are discussed in this section.

1. Statutory Authority

In the preliminary analysis, DOE stated its position that EPCA prevents the setting of both energy performance standards and prescriptive design requirements (see chapter 2 of the preliminary analysis TSD). DOE also stated its intent to amend the energy performance standards for automatic commercial ice makers, and not to set prescriptive design requirements at this time (see chapter 2 of the preliminary analysis TSD).

2. Test Procedures

As discussed in section III.A, DOE published a test procedure final rule in January 2012 (2012 test procedure final rule). 77 FR 1591 (Jan. 11, 2012). All automatic commercial ice makers covered by DOE energy conservation standards promulgated as a result of this energy conservation standards rulemaking will be required to use the 2012 test procedures to demonstrate compliance beginning on the compliance date set at the conclusion of this rulemaking. 77 FR at 1593 (Jan. 11, 2012). The standards can be found at title 10 CFR part 431, subpart H (or, alternatively, 10 CFR 431.134).

Since the publication of the 2012 test procedure final rule, DOE has received several inquiries from interested parties regarding proper conduct of the DOE test procedure. Specifically, interested parties inquired regarding the appropriate use of baffles and automatic purge water controls during the DOE test procedure. On January 28, 2013, DOE published draft guidance documents to address the issues regarding baffles [19] and automatic purge water controls [20] and provided an opportunity for interested parties to comment on those interpretations of the DOE test procedure for automatic commercial ice makers. The comment period for those guidance documents extended until February 28, 2013. DOE will publish a final guidance document and responses to all comments received on the DOE Appliance and Commercial Equipment Standards Web site (*www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1*). However, DOE notes that these guidance documents serve only to clarify existing test procedure requirements, as established in the 2012 test procedure final rule, and do not alter the DOE test procedure.

DOE's test procedures are set in separate rulemaking processes. However, as part of the automatic commercial ice maker energy conservation standards rulemaking, DOE did receive two comments related to the test procedures. Howe noted that measuring potable water use is important because de-scaling is crucial for maintaining the efficiency and utility of automatic commercial ice makers. Howe also recommended that DOE obtain information from additional manufacturers on the relationship between potable water use and automatic commercial ice maker performance. (Howe, No. 51 at p. 2) [21]

The People's Republic of China (China) noted that there are differences among test processes for refrigeration products issued by different bodies in the U.S. China stated that different test procedures may lead to different results for one product, and it will affect the judgment of compliance. Therefore, China suggested that the U.S. government unify the test procedure. (China, No. 55 at p. 3)

As noted earlier, the 2012 test procedure final rule was published on January 11, 2012, and the energy conservation standards will be based on this test procedure. 77 FR at 1593. With regard to Howe's comment, in the final rule, DOE elected to not require measurement of potable water. Since DOE is not setting potable water limits for automatic commercial ice makers, requiring manufacturers to measure potable water use would be an unnecessary expense. With regard to China's comment, DOE has no authority regarding adjustment of the test procedures of other organizations. Also, if there is any uncertainty regarding how to conduct the test, manufacturers and others may request clarification from DOE. By updating the test procedure to reflect current AHRI and ANSI/ASHRAE standards, DOE expects any differences of the type noted by China will be minimized.

3. Need for and Scope of Rulemaking

At the February 2012 preliminary analysis public meeting and in written

[19] *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_baffles_faq_2013-9-24final.pdf.*

[20] *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_purge_faq_2013-9-25final.pdf.*

[21] A notation in this form provides a reference for information that is in the docket of DOE's ''Energy Conservation Program for Certain Commercial and Industrial Equipment: Energy Conservation Standards for Automatic Commercial Ice Makers'' (Docket No. EERE–2010–BT–STD–0037), which is maintained at *www.regulations.gov.* This notation indicates that the statement preceding the reference is document number 51 in the docket for the automatic commercial ice makers energy conservation standards rulemaking, and appears at page 2 of that document.

comments, DOE received comments about the need for the rulemaking. Hoshizaki suggested DOE not adjust the energy standards for automatic commercial ice makers regulated under EPACT 2005, arguing that tightening the regulations that were just released 2 years ago would negatively impact both manufacturers and end users. (Hoshizaki, No. 53 at p. 3) AHRI opined that, because the full effects of the EPACT 2005 standards will not be known until at least 2013, DOE should only consider the previously uncovered continuous and high-capacity batch type ice makers in this rulemaking. (AHRI, No. 49 at p. 3)

Scotsman asked whether the upcoming rulemaking would cover products that both make and dispense ice. (Scotsman, Public Meeting Transcript, No. 42 at p. 26) [22]

In response to the comments about the need for starting this rulemaking, DOE notes that under EPACT 2005, DOE must review the existing standards and, if justified, develop amended standards by January 1, 2015. Thus, DOE commenced the rulemaking to ensure compliance with the statutory deadline. During the rulemaking, DOE considered alternatives to this rulemaking in the regulatory impact analysis; this analysis is described in Section IV.O of today's NOPR. As for covering products that make and dispense ice, the scope of the rulemaking is ice-making products. While the 42 U.S.C. 6311(19) definition of automatic commercial ice maker stated an ice maker may or may not include a means for dispensing or storing ice, not all ice makers do include such ancillary equipment. As discussed in the preliminary analysis TSD, section 2.2.4.2, DOE determined that promulgating standards to regulate the energy usage of dispensers and storage bins may have an unintended impact on customer choices when choosing between models that include or do not include such ancillary equipment. By regulating energy usage of ancillary equipment, DOE could disincentivize the manufacturing of such equipment. If, and to the extent that, ice dispensing equipment use electricity, such electricity usage is not covered by this rulemaking.

B. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information (*e.g.,* manufacturer specification sheets, industry publications) and data submitted by manufacturers, trade associations, and other stakeholders. The subjects addressed in the market and technology assessment for this rulemaking include: (1) Quantities and types of equipment sold and offered for sale; (2) retail market trends; (3) equipment covered by the rulemaking; (4) equipment classes; (5) manufacturers; (6) regulatory requirements and non-regulatory programs (such as rebate programs and tax credits); and (7) technologies that could improve the energy efficiency of the equipment under examination. DOE researched manufacturers of automatic commercial ice makers and made a particular effort to identify and characterize small business manufacturers. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Equipment Classes

In evaluating and establishing energy conservation standards, DOE generally divides covered equipment into classes by the type of energy used, or by capacity or another performance-related feature that justifies a different standard for equipment having such a feature. (42 U.S.C. 6295(q) and 6313(d)(4)) In deciding whether a feature justifies a different standard, DOE must consider factors such as the utility of the feature to users. *Id.* DOE normally establishes different energy conservation standards for different equipment classes based on these criteria.

Automatic commercial ice makers are divided into equipment classes based on physical characteristics that affect commercial application, equipment utility, and equipment efficiency. These equipment classes are based on the following criteria:

- Ice-making process
  - ○ ''Batch'' icemakers that operate on a cyclical basis, alternating between periods of ice production and ice harvesting
  - ○ ''Continuous'' icemakers that can produce and harvest ice simultaneously
- Equipment configuration
  - ○ Ice-making head (a single-package ice-making assembly that does not include an ice storage bin)
  - ○ Remote condensing
  - ▪ With remote compressor (compressor packaged with the condenser)
  - ▪ Without remote compressor (compressor packaged with the evaporator)
  - ○ Self-contained (with storage bin included)
- Condenser cooling
  - ○ Air-cooled
  - ○ Water-cooled
- Capacity range

Table IV.1 shows the 25 automatic commercial ice maker equipment classes that DOE is including in the scope of this rulemaking. The capacity ranges for the continuous units have changed from the preliminary analysis.

TABLE IV.1—AUTOMATIC COMMERCIAL ICE MAKER EQUIPMENT CLASSES

Type of ice maker	Equipment type	Type of condenser cooling	Rated harvest rate *lb ice/24 hours*
Batch	Ice-Making Head	Water	≥50 and <500
			≥500 and <1,436
			≥1,436 and <4,000
		Air	≥50 and <450
			≥450 and <4,000
	Remote Condensing (but not remote compressor)	Air	≥50 and <1,000
			≥1,000 and <4,000
	Remote Condensing and Remote Compressor	Air	≥50 and <934
			≥934 and <4,000

[22] A notation in the form ''Scotsman, Public Meeting Transcript, No. 42 at p. 26'' identifies a comment that DOE has received during a public meeting and has included in the docket of this rulemaking at *www.regulations.gov*. This particular notation refers to a comment: (1) Submitted by Scotsman; (2) transcribed from the public meeting in document number 42 of the docket, and (3) appearing on page 26 of that document.

TABLE IV.1—AUTOMATIC COMMERCIAL ICE MAKER EQUIPMENT CLASSES—Continued

Type of ice maker	Equipment type	Type of condenser cooling	Rated harvest rate *lb ice/24 hours*
	Self-Contained Unit	Water	≥50 and <200
			≥200 and <4,000
		Air	≥50 and <175
			≥175 and <4,000
	Ice-Making Head	Water	≥50 and <900
			≥900 and <4,000
		Air	≥50 and <700
			≥700 and <4,000
	Remote Condensing (but not remote compressor)	Air	≥50 and <850
			≥850 and <4,000
Continuous	Remote Condensing and Remote Compressor	Air	≥50 and <850
			≥850 and <4,000
	Self-Contained Unit	Water	≥50 and <900
			≥900 and <4,000
		Air	≥50 and <700
			≥700 and <4,000

Batch type and continuous type ice makers are distinguished by the mechanics of their respective ice-making processes. Continuous type ice makers are so named because they simultaneously produce and harvest ice in one continuous, steady-state process. The ice produced in continuous processes is called ''flake'' or ''nugget'' ice, which is often a ''soft'' ice with high liquid water content, in the range from 10 to 35 percent, but can also be subcooled, *i.e.,* be entirely frozen and at temperature lower than 32 °F. Continuous type ice makers were not included in the EPACT 2005 standards and are therefore not currently regulated by DOE energy conservation standards.

Current energy conservation standards cover batch type ice makers that produce ''cube'' ice, which is defined as ice that is fairly uniform, hard, solid, usually clear, and generally weighs less than two ounces (60 grams) per piece, as distinguished from flake, crushed, or fragmented ice. 10 CFR 431.132 Batch ice makers alternate between freezing and harvesting periods and therefore produce ice in discrete batches rather than in a continuous process. After the freeze period, hot gas is typically redirected from the compressor discharge to the evaporator, melting the surface of the ice cubes that is in contact with the evaporator surface, enabling them to be removed from the evaporator. The evaporator is then purged with potable water, which removes impurities that would decrease ice clarity. Consequently, batch type ice makers typically have higher potable water usage than continuous type ice makers.

After the publication of the Framework document, several parties commented that machines producing ''tube'' ice, which is created in a batch process identical to that which produces cube ice, should also be regulated. DOE notes that tube ice machines of the covered capacity range that produce ice fitting the definition for cube type ice are covered by the current standards, whether or not they are referred to as cube type ice makers within the industry. Nonetheless, DOE has addressed the commenters' suggestions by emphasizing that all batch type ice machines are within the scope of this rulemaking, as long as they fall within the covered capacity range of 50 to 4,000 lb ice/24 hours. This includes tube ice makers and other batch type ice machines (if any) that produce ice that does not fit the definition of cube type ice. To help clarify this issue, DOE now refers to all batch automatic commercial ice makers as ''batch type ice makers,'' regardless of the shape of the ice pieces that they produce. 77 FR 1591 (Jan. 11, 2012).

During the February 2012 preliminary analysis public meeting and in subsequent written comments, a number of stakeholders addressed issues related to proposed equipment classes and the inclusion of certain types of equipment in the analysis. These topics are discussed in this section.

a. Cabinet Size

Currently, DOE does not consider physical size as a criterion for setting equipment classes.

Several stakeholders commented on the size standardization of ice makers. Scotsman commented that most ice makers are built in standard widths of 22, 30, and 48 inches and standard depths between 24 and 28 inches, although heights may vary slightly depending on the machine. (Scotsman, Public Meeting Transcript, No. 42 at p. 61) Manitowoc noted that the reason for this standardization is that most ice storage bins have standard sizes based on ice-making capacity, and the footprint of the ice maker on top needs to be the same as the footprint of the storage bin in order for them to fit together. Hence, according to Manitowoc, the industry has developed common sizes that have facilitated ice maker installations and replacements. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 91–92) Howe countered that, contrary to the assertions of other stakeholders, there are no ''standard'' ice maker dimensions. (Howe, No. 51 at pp. 1–2)

Earthjustice commented that it may be helpful to use cabinet size as an additional criterion for defining equipment classes because the existing standard sizes of ice makers affect their efficiency and their utility to the consumer, both of which are factors that DOE typically considers in identifying equipment classes. (Earthjustice, Public Meeting Transcript, No. 42 at pp. 90–91)

However, Manitowoc commented that it manufactures ice makers in different cabinet sizes that deliver the same ice-making capacity, explaining that this facilitates flexible installation decisions but could complicate efforts to define equipment classes by cabinet size. (Manitowoc, Public Meeting Transcript, No. 42 at p. 91)

The Appliance Standards Awareness Project (ASAP) commented that it would be helpful to see a size analysis that would elucidate the effects of size on utility to the customer and potential energy savings. (ASAP, Public Meeting Transcript, No. 42 at pp. 73–74)

As noted by Manitowoc and Scotsman, there are standard sizes for

ice makers. DOE's review of product literature supports these claims, in contrast to Howe's assertion that there are no standard sizes. However, not all customers face size constraints.

DOE notes that a reason to consider separate equipment classes based on physical dimensions is to address differences in energy efficiency. An important size-related factor that can affect the efficiency of an ice maker is the size of its heat exchangers (*i.e.,* the evaporator and condenser).[23] A larger evaporator can make more ice per freeze cycle. Hence, for a given harvest capacity rate, the cycle can be allowed to take longer, thus reducing the required heat transfer rate per evaporator surface. The reduced heat transfer rate can be provided by a lower temperature differential between the ice and the refrigerant. Likewise, as the surface area of a condenser increases, the temperature differential between the refrigerant and the cooling medium (either air or water) decreases. These design changes can lead to higher evaporating temperature and lower condensing temperature, which both reduce the pressure differential between the compressor suction and discharge ports, which reduces the amount of electrical power necessary to compress the vapor, thus reducing energy consumption of the ice maker.

To address size limitations and to save energy, DOE could consider Earthjustice's recommendation to use size as a criterion in setting equipment classes. To do so, DOE could establish parallel sets of equipment classes—size-constrained classes (in which physical size would be limited to a prescribed maximum) and non-size-constrained classes (for which there would be no size restrictions). In the size-constrained classes, DOE's ability to set stricter energy usage limits would be limited by the constraint that the physical size of the unit cannot be increased. In the non-size-constrained classes, additional energy savings could be achieved by setting standards that increase the physical size of the unit as well as making the units more efficient. Accounting for size constraints is important in the automatic commercial ice maker industry because replacement sales comprise a majority of sales and equipment must be able to fit into the same space as the unit it replaces, and fit on existing ice storage bins, as described above. For opportunities in which physical size is not critical, non-size-constrained equipment classes could save energy relative to the size-constrained units. If DOE decided not to establish separate equipment classes for space-constrained equipment, it may not be reasonable for DOE to consider design options that significantly increase physical size of the equipment, which would limit potential efficiency gains and/or make them more costly, thus likely resulting in less stringent standards for size-limited equipment classes.

Previous DOE rulemakings provide ample precedent for creating space-constrained equipment classes. For instance, DOE developed space-constrained equipment classes for packaged terminal air conditioners and through-the-wall air conditioners, both of which represent industries in which replacement comprises a majority of sales. 10 CFR 430.32

To determine whether space constraint is an issue (*i.e.,* whether efficiency and physical size are direct functions of one another), DOE followed ASAP's suggestion and prepared an analysis of the size and efficiency of automatic commercial ice makers. Using publicly available manufacturer information, DOE collected size[24] data for approximately 600 ice makers and mapped it to efficiency information listed in the AHRI database. After plotting and analyzing this data, DOE determined that, although there is a correlation between size and efficiency in automatic commercial ice makers, this correlation is not conclusive.

Table IV.2 displays sample results of this size analysis, presenting information for two different large, air-cooled IMH batch type ice makers at each of several selected harvest capacities. In many cases, the larger equipment is more efficient. For example, among the ice makers that can produce 1,500 lb ice/24 hours, the 28 ft^3 products have total energy consumption values that are lower than the current energy consumption standard by greater than >20 percent, while the 19 ft^3 products have total energy consumption values that are only 6 percent below the standard. In other cases, the data do not support this trend. For example, among the 800 lb ice/24 hour ice makers, the 17 ft^3 products are less efficient than the 11 ft^3 products. Finally, in cases such as the 1,430 lb ice/24 hour machines, there are also products with the same harvest capacity and volume that nonetheless have different efficiencies. Therefore, it is difficult to draw a decisive conclusion from this data.

TABLE IV.2—RELATIONSHIP BETWEEN VOLUME AND EFFICIENCY FOR LARGE IMH AIR-COOLED BATCH ICE MAKERS

Rated harvest rate *lb ice/24 hours*	Volume *ft^3*	% Below baseline energy use (percent)
500	9.1	3.2
	12.4	2.2
800	10.8	13.5
	16.8	3.5
1,150	18.0	13.5
	20.8	18.1
1,430	20.1	3.0
	20.1	4.6
1,530	19.3	6.0
	27.7	21.3

Manitowoc noted during the February 2012 preliminary analysis public meeting that it produces units with the same harvest rate in different size chassis sizes, and that these units have very similar features. (Manitowoc, Public Meeting Transcript, No. 42 at p. 91) DOE, in its analysis, has noted that some manufacturers have achieved higher efficiencies for ice makers in smaller sizes (at constant harvest rates). Based on this information, DOE believes that size does affect efficiency levels (as it allows for large heat exchangers), but it is not the definitive factor in determining efficiency for ice makers.

Therefore, DOE has determined that separate equipment classes for size-constrained units are not warranted. DOE notes that there is not a strong correlation between product size and product efficiency that supports separate equipment classes. Furthermore, DOE believes that adding additional classes for size-constrained units complicates the equipment class structure and analysis but does not improve the rulemaking or standards.

b. Large-Capacity Batch Ice Makers

In the November 2010 Framework document for this rulemaking, DOE requested comments on whether coverage should be expanded from the current covered capacity range of 50 to 2,500 lb ice/24 hours to include ice makers producing up to 10,000 lb ice/24 hours. All commenters agreed with expanding the harvest capacity coverage, and all but one of the commenters supported or accepted an upper harvest capacity cap of 4,000 lb ice/24 hours, which would be consistent with the current test procedure, AHRI Standard 810–2007. Most commenters categorized ice makers with harvest

[23] Other examples are use of some higher-efficiency compressors, which can be physically larger, and packaging of drain water heat exchangers within the equipment package.

[24] Size is expressed in terms of volume, calculated by multiplying unit width by unit depth and by unit height (width × depth × height).

capacities above 4,000 lb ice/24 hours as industrial rather than commercial. To be consistent with the majority of these comments, DOE proposed during the preliminary analysis to set the upper harvest capacity limit to 4,000 lb ice/24 hours, even though there are few ice makers currently produced with capacities ranging from 2,500 to 4,000 lb ice/24 hours. 77 FR 3405 (Jan. 24, 2012) Since the publication of the preliminary analysis, DOE revised the test procedure, with the final rule published in January 2012, to include all batch and continuous type ice makers with capacities between 50 and 4,000 lb ice/24 hours. 77 FR 1591, 1613–14 (Jan. 11, 2012). In the 2012 test procedure final rule, DOE noted that 4,000 lb ice/24 hours represented a reasonable limit for commercial ice makers, as larger-sized ice makers were generally used for industrial applications and testing machines up to 4,000 lb was consistent with AHRI 810–2007. 77 FR 1591 (Jan. 11, 2012). Therefore, because DOE now has a procedure for testing ice makers with capacities up to 4,000 lb ice/24 hours, DOE proposes in this NOPR to set efficiency standards that include all ice makers in this extended capacity range.

In written comments after the publication of the preliminary analysis, AHRI and Manitowoc both recommended that DOE refrain from regulating products with capacities above 2,500 lb ice/24 hours if there are not enough high-capacity batch machines available for DOE to analyze. (AHRI, No. 49 at pp. 3–4; Manitowoc, No. 54 at p. 3)

DOE acknowledges that there are currently few automatic commercial ice makers with harvest capacities above 2,500 lb ice/24 hours. However, DOE already has a precedent of setting standards for harvest capacity ranges in which there are no products available. There are currently no IMH air-cooled ice makers on the market with harvest capacities above 1,650 lb ice/24 hours, yet EPACT 2005 amended EPCA to set standards for this equipment class of ice makers with harvest capacities up to 2,500 lb ice/24 hours. Because it is possible that batch-type ice makers with harvest capacities from 2,500 to 4,000 lb ice/24 hours will be manufactured in the future, DOE does not find it unreasonable to set standards in this rulemaking for batch type ice makers with harvest capacities in the range up to 4,000 lb ice/24 hours. Therefore, DOE maintains its position to include large-capacity batch type ice makers in the scope of this rulemaking. However, DOE requests comment and data on the viability of the proposed standard levels selected for batch-type ice makers with harvest capacities from 2,500 to 4,000 lb ice/24 hours. The proposed standard levels are discussed in Section V.A.2 of today's NOPR.

c. Efficiency/Harvest Capacity Relationship

In the current energy conservation standards, DOE uses discrete harvest capacity breakpoints to differentiate cube machine classes, and DOE proposes to do the same with new classes for continuous machines.

In reviewing industry literature, DOE found that compressor efficiency increases over a range of harvest rate capacities and then tends to flatten out at the higher capacities. This trend is illustrated in Table IV.3, which displays the capacities and energy efficiency ratios (EERs) of one family of reciprocating compressors. As shown in this table, the EERs of compressors in this family level off to between 6.5 and 7.2 British thermal units per watt-hour (Btu/Wh) at capacities beyond 14,300 Btu per hour.

TABLE IV.3—RELATIONSHIP OF COMPRESSOR CAPACITY TO EER

Capacity *Btu/hr*	EER *Btu/Wh*
7,970	5.8
8,440	5.1
8,840	6.0
9,870	6.2
10,200	5.5
10,900	6.3
11,300	5.5
12,400	7.0
12,900	6.0
14,100	5.9
14,300	6.5
14,900	6.6
18,100	7.0
18,300	6.5
18,600	6.6
19,600	5.6
22,200	6.5
22,500	7.2
24,300	7.1
24,600	6.6
26,000	6.5
29,300	6.7
29,600	6.6
30,500	6.7
31,300	6.9
34,400	6.7
36,700	6.7
42,200	6.8

Due primarily to the compressor trends discussed above, ice maker energy usage also varies as products increase in cooling capacity. Ice maker energy use (in kilowatt-hours per 100 lb of ice) decreases as the harvest rate increases in all products, but because the compressor trends do not continue indefinitely, the ice maker energy usage becomes constant at larger harvest rates. The point at which usage becomes constant for ice makers varies by equipment type.

DOE has traditionally used a piecewise linear approach [25] to depict the standard levels, with the breakpoints defining the harvest capacity rate limits of different equipment classes. Thus, for the current energy conservation standards for batch type equipment, the maximum allowable energy use declines as harvest capacity increases for the smallest harvest capacity rate equipment classes. In contrast, for most of the larger harvest capacity rate equipment classes, the maximum allowable energy use is a constant. The one exception is the large IMH air-cooled equipment class, where the maximum allowable energy use continues to decrease as harvest capacity rate increases. DOE believes that its piecewise energy consumption limits facilitate the simple calculation of energy standards while accurately depicting the complex relationship between capacity and efficiency.

Several stakeholders commented on DOE's decision to set piecewise efficiency levels according to harvest capacity. At the February 2012 preliminary analysis public meeting, the Northwest Power and Conservation Council (NPCC) questioned whether setting standards by capacity range would create discontinuous breakpoints in efficiency requirements that would drive manufacturers to seek one level of capacity over another to take advantage of a more favorable standard. (NPCC, Public Meeting Transcript, No. 42 at p. 22) In written comments, the Northwest Energy Efficiency Alliance (NEEA), NPCC, and the California Investor-Owned Utilities (CA IOUs) recommended that DOE imitate ENERGY STAR® and use a single equation for each equipment class to define energy consumption standards as a function of harvest rate, rather than having multiple efficiency standards for different harvest capacity bins. (NEEA/NPCC, No. 50 at p. 2; CA IOUs, No. 56 at p. 2) CA IOUs added that, if DOE elects to continue distinguishing equipment classes based on harvest capacity breakpoints, it should explain

[25] A piecewise function is a mathematical relationship where the relationship between the independent variable and dependent variable varies over the inspected range. Different functions are used to describe this relationship for each discrete interval where this relationship is defined. The piecewise function is a way of expressing the full relationship (*http://mathworld.wolfram.com/PiecewiseFunction.html*).

its reasoning for doing so. (CA IOUs, No. 56 at p. 3)

The newly finalized ENERGY STAR specification eliminates discontinuities by using one equation for IMH and self-contained cube equipment as well as all three continuous equipment types, while achieving something similar to the asymptotic relationship mentioned by Manitowoc. The ENERGY STAR specification accomplishes this with equations that are more complex than those currently embodied in DOE's cube ice machine standards, which have simple ''intercept and slope'' or ''fixed and variable'' components. For example, DOE's current energy consumption limit for small IMH air-cooled equipment is as follows:

Maximum Energy Usage (kWh) $\leq 10.26 - 0.0086H$

(Where H = harvest rate capacity, up to 449 lb ice/24 hours)

The April 30, 2012 ENERGY STAR specification for the same equipment is:

Maximum Energy Usage (kWh) $\leq 37.72H^{-0.298}$

By means of a more complicated formula, the ENERGY STAR specification creates a continuous curve while still respecting the asymptotic relationship between efficiency and harvest capacity.

Manitowoc commented that it was not particularly important where the DOE places capacity breakpoints for different equipment classes as long as the breakpoints respect the asymptotic relationships between size and efficiency. Manitowoc also asked that there not be any real discontinuities at these breakpoints or discrepancies from the industry mean efficiency/capacity relationships. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 25–26) CA IOUs similarly requested that DOE base its harvest capacity breakpoints on an investigation of the market, rather than automatically using pre-existing breakpoints, and added that any new equipment classes generated by resetting these breakpoints must not allow backsliding. (CA IOUs, No. 56 at p. 3)

The issue raised by NPCC and echoed by Manitowoc is that the equations used in the standards can cause points of discontinuity where rating equipment at slightly different capacity levels provides a benefit to the manufacturer in terms of allowable energy usage. In the current standards for IMH water-cooled units, one discontinuity exists at 500 lb ice/24 hours, the breakpoint between the small and medium harvest capacity rate equipment classes, where there is a 0.1 kWh/100 lb energy use gap, representing 2.0 percent of the 5.04 kWh/100 lb maximum allowable energy use at this harvest capacity rate. However, eliminating this type of gap in the energy conservation standards would not require departure from a piecewise linear representation of maximum allowable energy use.

Fitting a curve as was done to create the ENERGY STAR limits would be more complicated than creating a new standard that mirrors the existing usage limit structure. It would also be more difficult for customers, such as restaurant owners, who buy ice makers and need to make sense of the standards because the ENERGY STAR equation requires a calculator or a spreadsheet, and, DOE believes, leads to more questions and complexity.

The single equation approach also runs somewhat contrary to the comments received from manufacturers. With the single equation provided by ENERGY STAR, energy usage limits for large machines continue to decline to zero (albeit at diminishing rates). The manufacturer comments cited in the discussion of large machines above provided several reasons that, at very high capacities, design constraints cause these products to have constant energy usage across different harvest capacities. This means that, at a certain point, efficiency tends to become more constant as harvest capacity changes, as is embodied in the current standards. The single equation approach would make it more difficult for the DOE standards to reflect this trend in the market.

DOE has decided to continue structuring the equipment classes by utilizing multiple harvest rate sizes rather than moving to a single equation approach. By continuing to use multiple size classes, DOE will have greater flexibility to adequately address the efficiencies of large equipment classes. The risk of exploiting the system at size class break points can be mitigated by carefully developing standards. Moreover, DOE proposes amending the baseline energy standards to eliminate existing discontinuities at harvest capacity breakpoints. Note that under the DOE test procedure and specifically the updated ANSI/ASHRAE Standard 29–2009 that was incorporated by reference in that rule, harvest rates are to be determined at the time of test, and are not based on manufacturer specifications. (10 CFR 431.134) Furthermore, in EPACT 2005, Congress directed DOE to monitor whether manufacturers reduce harvest rates below tested values for the purpose of bringing non-complying equipment into compliance. (42 U.S.C. 6316(f)(4)(A)) DOE therefore intends to carefully assess whether such manipulation occurs as a result of any final rule using distinct break points.

AHRI Standard 810–2007, as referenced by the DOE test procedure, states that the energy consumption rate of ice makers should be rounded to the nearest 0.1 kWh. By considering the standard levels using this rounding convention, the only existing discontinuity in DOE's standards for batch type ice makers occurs at the breakpoint of 500 lb/24 hr between the IMH–W–Small–B and IMH–W–Medium–B equipment classes. In its analysis, DOE adjusted the baseline energy level for the IMH–W–Small–B equipment class to 7.79–0.0055H from 7.80–0.0055H. This 0.01 change eliminates the discontinuity at this breakpoint, as seen in Table IV.4. In setting up TSLs, DOE sought to ensure that no discontinuities existed between equipment classes.

TABLE IV.4—CURRENT STANDARD AND DOE ENGINEERING BASELINE FOR IMH–W–SMALL–B EQUIPMENT TYPE

Equipment type	Current baseline (7.80–0.0055H)	New baseline (7.79–0.0055H)
IMH–W–Small–B	5.1 (rounded from 5.050)	5.0 (rounded from 5.040).
IMH–W–Medium–B	5.0 (rounded from 5.030)	5.0 (rounded from 5.030).

d. Continuous Ice Maker Equipment Classes

The EPACT 2005 amendments to EPCA did not set standards for continuous type ice makers. At the February 2012 preliminary analysis public meeting, DOE presented NES results (see section IV.H.3 of this notice) that indicated the continuous equipment type accounted for approximately 0.03 quads of savings potential over the 30-year analysis period. The savings levels are low primarily because continuous type ice-making machines represent only 16 percent of automatic commercial ice maker shipments, of which only two equipment classes (IMH air-cooled small and self-contained air-cooled small equipment) represent three-quarters of shipments.

At the February 2012 preliminary analysis public meeting and in written comments, AHRI and Scotsman both questioned the need to regulate continuous type ice makers, noting that the preliminary results of DOE's national impact analysis show negligible NES (rounding to 0.000 quads) for most continuous type equipment classes. (AHRI, No. 49 at pp. 1–2; Scotsman, No. 46 at p. 5; Scotsman, Public Meeting Transcript, No. 42 at p. 105)

AHRI and Scotsman questioned the need to include continuous remote condensing units (RCUs) with remote compressors as equipment classes, noting that these are niche products that represent a very small portion of the overall market. AHRI added that their minimal projected energy savings and low shipment volume would not justify the cost of testing and certifying these products to DOE. (AHRI, No. 49 at p. 3; Scotsman, No. 46 at p. 2)

Pursuant to EPCA, DOE is required to set new or amended energy conservation standards for automatic commercial ice makers to: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B); 6313(d)(4)) The EPCA language does not require DOE to determine the significance of savings at the individual equipment class level in order to justify setting standards for all equipment classes of an equipment type

DOE has decided to regulate all automatic commercial ice maker equipment classes. This will bring two important automatic commercial ice maker classes (self-contained, air-cooled small continuous and IMH air-cooled small continuous) under regulation. Regulating all equipment classes will create a consistent approach for regulating continuous type equipment as was done for batch type equipment.

e. Remote Condensing Unit Classes for Equipment With and Without Remote Compressors

The current standard levels differentiate between remote condensers with compressors in the condenser cabinet and remote condensers without remote compressors. DOE requested comment on whether to retain these equipment classes as separate groups. (DOE, Public Meeting Presentation, No. 7 at p. 30)

Numerous stakeholders expressed their support for DOE's differentiation of RCUs into two separate classes based on the location of their compressors. Manitowoc raised the issue at the public meeting, noting that locating the compressor remotely has a measurable impact on the overall efficiency of an ice maker. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 24–25) Scotsman added that these two classes of RCUs perform at different efficiencies in the field and provide different utility to the customer, thus justifying their separation into separate equipment classes. (Scotsman, Public Meeting Transcript, No. 42 at p. 45 and No. 46 at p. 2) NPCC expressed agreement with Scotsman's comment on the issue. (NPCC, Public Meeting Transcript, No. 42 at p. 45)

Based on DOE's review of these comments and data arising from the analyses, DOE believes the location of the compressor provides different customer utility, and that each equipment class experiences different energy usage trends due to suction line losses. DOE did not receive any information indicating that these equipment classes should not be kept separate. Therefore, DOE will continue to categorize RCUs with and without remote compressors into separate equipment classes.

f. Remote to Rack Equipment

In the preliminary analysis, DOE found that some high-capacity RCU–RC–Large–C ice makers are solely designed to be used with compressor racks and the racks' associated condensers. A compressor rack is typically used with supermarket refrigeration equipment and consists of several compressors joined in a parallel arrangement to service several refrigeration products at once. One related issue is that the manufacturers of these automatic commercial ice makers do not provide for sale a condensing unit that could be paired with them as an alternative option. DOE noted that these units do not meet the statutory definition of ice makers, which states that an ice maker ''consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice.'' (42 U.S.C. 6311(19)(A)) Hence, DOE determined during the preliminary analysis that rack-only RCUs are not defined as ice makers under the statute and thus should not be included in this rulemaking.

Howe recommended that DOE include remote to rack ice makers in the rulemaking because such units already represent a significant fraction of annual ice maker shipments and will become even more significant once the covered capacity range expands to 4,000 lb ice/24 hours. (Howe, No. 51 at p. 4) Conversely, Scotsman commented that continuous RCUs with remote compressors comprise a very tiny piece of the overall automatic commercial ice maker market and thus questioned the need to establish equipment classes for these products. Scotsman added that these RCUs are difficult to test [26] because they are designed to be connected to supermarket rack systems. (Scotsman, No. 46 at p. 2)

Earthjustice observed that DOE has not explained why it believes that ice makers designed for use with remote condenser rack systems do not consist of ''a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice,'' as automatic commercial ice makers are defined. Earthjustice argued that such ice makers use the same basic components, including both a condensing unit and an ice-making section. Moreover, Earthjustice continued, the two components are directly connected, and their integration is not nullified by the fact that other equipment may also be connected to the supermarket rack. Earthjustice added that DOE has long regulated split system residential and commercial air conditioners despite the fact that the outdoor and indoor components are frequently made by different firms. (Earthjustice, No. 47 at p. 5)

Given the small market share of large continuous RCU remote compressor equipment (0.35 percent), DOE finds that Scotsman's claim is credible in that continuous, rack-only equipment comprises only a fraction of the 0.35 percent, and thus a tiny piece of the overall market.

[26] The current and recently completed DOE test procedures do not provide test procedures for this type of equipment.

The Earthjustice comment drawing a parallel to split system residential air conditioners overlooks key distinctions. Residential equipment may pair components from different manufacturers, but only one manufacturer is responsible for the certification.[27] Supermarket racks simultaneously serve multiple units of equipment (including commercial refrigerators and freezers, walk-in coolers and freezers, ice makers, air conditioners, and heat pumps), so there is no way to hold one manufacturer responsible for certifying its energy consumption. Drawing a parallel between these two circumstances is therefore not reasonable in that respect.

Therefore, DOE decided to maintain its position not to cover rack-only RCU units in this standards rulemaking. DOE does request comment and supporting data on the overall market share of these units and any expected market trends.

g. Ice Makers Covered by the Energy Policy Act of 2005

Of the 25 equipment classes that DOE is considering in this rulemaking, 13 are already covered under energy conservation standards that were set for cube type ice makers as part of EPACT 2005. Current automatic commercial ice maker standards covering cube type ice makers took effect on January 1, 2010. Under the requirements of EPCA, DOE must review and make a determination as to whether amendments to the standards are technologically and economically justified by January 1, 2015. (42 U.S.C. 6313(d)(3)(A))

In written comments, AHRI opined that, because the full effects of the EPACT 2005 ruling will not be known until at least 2013, DOE should only consider the previously uncovered continuous and high-capacity batch type ice makers in this rulemaking. (AHRI, No. 49 at p. 3) Similarly, Hoshizaki asked DOE not to adjust the energy standards for automatic commercial ice makers that are currently covered, arguing that tightening the regulations that were just released two years ago would negatively impact both manufacturers and end users. (Hoshizaki, No. 53 at p. 3)

DOE is required by statute to review the standards and, if amended standards are technologically feasible and economically justified, to issue a rule to amend the standards. (42 U.S.C. 6313(d)(3)(A))

Manufacturers have asserted that the automatic commercial ice maker industry is a small component of the commercial refrigeration industry, and that given their size they have little or no influence with the manufacturers of major components such as compressors. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 14–15) Manufacturers noted that they are generally restricted to design options available to larger customers. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 15)

Consistent with the comments from manufacturers, DOE's engineering analysis included design options that are viable for automatic commercial ice makers. Most of the design options are extensively used in existing products, and a few design options (brushless DC motors) are available but rarely implemented in this equipment. Chapter 5 of the NOPR TSD contains further details of the analysis for each design option used.

DOE has alternatives with respect to the date that new standards would take effect. EPCA requires that the amended standards established in this rulemaking must apply to equipment that is manufactured on or after 3 years after the final rule is published in the **Federal Register** unless DOE determines, by rule, that a 3-year period is inadequate, in which case DOE may extend the compliance date for that standard by an additional 2 years. (42 U.S.C. 6313(d)(3)(C))

For the NOPR analyses, DOE assumed a 3-year period to prepare for compliance. DOE requests comments on whether a January 1, 2018 effective date provides an inadequate period for compliance and what economic impacts would be mitigated by a later effective date.

DOE also requests comment on whether the 3-year period is adequate for manufacturers to obtain more efficient components from suppliers to meet proposed revisions of standards.

h. Regulation of Potable Water Use

Under EPACT 2005, water used for ice—referred to as potable water—was not regulated for automatic commercial ice makers.

The amount of potable water used varies significantly among batch type automatic commercial ice makers (*i.e.,* cube, tube, or cracked ice machines). Continuous type ice makers (*i.e.,* flake and nugget machines) convert essentially all of the potable water to ice, using roughly 12 gallons of water to make 100 lb of ice. Batch type ice makers use an additional 3 to 38 gallons of water in the process of making 100 lb of ice. This additional water is referred to as ''dump or purge water'' and is used to cleanse the evaporator of impurities that could interfere with the ice-making process.

The Alliance for Water Efficiency (Alliance), the Natural Resources Defense Council (NRDC), and CA IOUs proposed that DOE regulate the water use of automatic commercial ice makers. (Alliance, No. 45 at pp. 3–4; NRDC, No. 48 at p. 2; CA IOUs, No. 56 at p. 6) The Alliance noted that the potable water lost from purging represents a waste of the energy required to pump, treat, deliver, and dispose of this water on a national scale. This embedded energy use, the Alliance argued, gives DOE justification to include water efficiency standards along with its energy efficiency standards for automatic commercial ice makers. The Alliance recommended that DOE analyze technical data from real ice makers in order to accurately determine the minimum potable purge water rate required to prevent scaling. The Alliance also observed that the huge variation in potable water use among ice makers of similar capacities suggests that some ice makers may be purging water at excessive rates in order to overcome poor maintenance practices and schedules, which is not a justifiable excuse in the opinion of the Alliance. (Alliance, No. 45 at pp. 3–4) CA IOUs also recommended that DOE consider establishing potable water use limits, especially because the ENERGY STAR program already includes such limits. (CA IOUs, No. 56 at p. 6)

In response to comments from the Alliance, NRDC, and CA IOUs, DOE was not given a specific mandate by Congress to regulate potable water. EPCA, as amended, explicitly gives DOE the authority to regulate water use in showerheads, faucets, water closets, and urinals (42 U.S.C. 6291(6), 6295(j) and (k)), clothes washers (42 U.S.C. 6295(g)(9)(B)), dishwashers (42 U.S.C. 6295(g)(10)(B)), commercial clothes washers (42 U.S.C. 6313(e)), and batch (cube) commercial ice makers. (42 U.S.C. 6313(d)) With respect to batch commercial ice makers (cube type machines), however, Congress explicitly set standards in EPACT 2005 only for condenser water use, which appear at 42 U.S.C. 6313(d)(1), and noted in a footnote to the table that potable water

[27] Under DOE regulations, it is possible for more than one central air conditioner manufacturer to submit certification reports for a given condensing unit. 10 CFR 429.16 requires manufacturers of central air conditioners to certify compliance with the energy conservation standards to DOE. Where a coil manufacturer may offer a coil for sale to be matched with a condensing unit made by another manufacturer (mix-matched combination), the coil manufacturer can make representations for condensing unit coil combination, but, since the condensing unit manufacturer does not offer for sale the mixed-matched combination, only the coil manufacturer offering the combination for sale is responsible for certification of that combination.

use was not included.[28] Congress thereby recognized both types of water, and did not provide direction to DOE with respect to potable water standards. This ambiguity gives the DOE considerable discretion to regulate or not regulate potable water. The U.S. Supreme Court has determined that, when legislative intent is ambiguous, a government agency may use its discretion in interpreting the meaning of a statute, so long as the interpretation is reasonable.[29] In the case of ice makers, EPACT 2005 is ambiguous on the subject of whether DOE must regulate water usage for purposes other than condenser water usage in cube-making machines, so DOE therefore has chosen to use its discretion not to mandate a standard in this case. DOE instead considered potable water use reduction in batch-type ice makers as a design option for reducing energy use. DOE notes that the ENERGY STAR program has implemented potable water consumption requirements.

Hoshizaki commented that potable water use varies from place to place, depending on water quality, and added that the market is already dictated to use less water. (Hoshizaki, Public Meeting Transcript, No. 42 at p. 73) AHRI added that limiting potable water use would decrease ice clarity and increase scaling, which would subsequently increase the overall energy use of the ice maker. Therefore, AHRI and Hoshizaki both recommended against establishing maximum potable water use standards in this rulemaking because of the reduced utility and efficiency that it would cause. (AHRI, No. 49 at pp. 2–3; Hoshizaki, No. 53 at p. 1)

The Hoshizaki and AHRI comments suggest that DOE intends to implement potable water use standards, but this is not the case. Rather, DOE is simply suggesting that reduction of potable water use is a viable technology option that satisfies the screening analysis criteria, as long as reductions are not excessive. This approach does not establish potable water use maximums since manufacturers are not required to use this design option in order to meet efficiency standards. Scotsman noted that the ENERGY STAR program has limited potable water use in ice makers to 25 gallons per 100 lb of ice and that the program is moving toward a new standard of 20 gallons per 100 lb of ice, which it believes to be the minimum levels for avoiding machine performance issues. Scotsman recommended that DOE refer to these ENERGY STAR standards in determining new potable water use limits. (Scotsman, Public Meeting Transcript, No. 42 at pp. 64–65 and No. 46 at p. 5) Manitowoc agreed with Scotsman and added that the new 20 gallons per 100 lb metric was developed with the aid of manufacturers and that further reducing potable water use could impact the long-term reliability of its machines. Therefore, Manitowoc stated that 20 gallons per 100 lb is the lowest water use limit with which it would be comfortable. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 65–66)

However, Manitowoc also commented that potable water use is a variable in the design process that manufacturers have already optimized to satisfy a number of competing factors. Manitowoc argued that, although reducing potable water use would improve machine efficiency up to a point, it would also decrease reliability and increase the required frequency for cleaning due to scaling. Manitowoc stated that the design limits for potable water use often depend on proprietary design elements; therefore, it would be difficult to set reasonable potable water use standards that were fair to all companies, in Manitowoc's opinion. (Manitowoc, No. 54 at p. 3)

Howe noted that measuring potable water use is important because de-scaling is crucial for maintaining the efficiency and utility of automatic commercial ice makers. Howe also recommended that DOE obtain information from additional manufacturers on the relationship between potable water use and ice maker performance. (Howe, No. 51 at p. 2)

DOE has implemented in the analysis the recommendations of several stakeholders that 20 gallons per 100 lb of ice is a reasonable lower limit on potable water use for batch type ice makers, especially considering that there are numerous batch type ice machines that have potable water use at this level or lower. For example, in implementing batch water control as a design option, DOE is limiting the reduction in potable water use to 20 gallons per 100 lb. This should not be confused with the establishment of a standard—this limit affects the extent to which a specific design option saves energy by placing a floor under the potable water usage. Though NRDC claims that reducing potable water use beyond this level would be feasible and beneficial, it has not identified specific designs with significantly less potable water use, nor has it provided data to show that long-term field use of such equipment is viable. Chapter 5 of the NOPR TSD contains more information about this analysis.

2. Technology Assessment

As part of the market and technology assessment, DOE developed a comprehensive list of technologies to improve the energy efficiency of automatic commercial ice makers, shown in Table IV.5. Chapter 3 of the NOPR TSD contains a detailed description of each technology that DOE identified. DOE only considered in its analysis technologies that would impact the efficiency rating of equipment as tested under the DOE test procedure. The technologies identified by DOE were carried through to the screening analysis and are discussed in section IV.C.

[28] Footnote to table at 42 U.S.C. 6313(d)(1).

[29] *Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 986 (2005) (quoting *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 845 (1984)).

TABLE IV.5—TECHNOLOGY OPTIONS FOR AUTOMATIC COMMERCIAL ICE MAKERS

Technology options		Batch ice makers	Continuous ice makers	Notes
Compressor	Improved compressor efficiency	√	√	
	Part load operation	√	√	
Condenser	Increased surface area	√	√	
	Enhanced fin surfaces	√	√	Air-cooled only.
	Increased air flow	√	√	Air-cooled only.
	Increased water flow	√	√	Water-cooled only.
	Brazed plate condenser	√	√	Water-cooled only.
	Microchannel condenser	√	√	
Fans and Fan Motors	Higher efficiency condenser fans and fan motors.	√	√	Air-cooled only.
Other Motors	Improved auger motor efficiency		√	
	Improved pump motor efficiency	√		
Controls	Smart Technologies	√	√	
Evaporator	Design options which reduce energy loss due to evaporator thermal cycling.	√		
	Design options which reduce harvest meltage or reduce harvest time.	√		
	Larger evaporator surface area	√	√	
	Tube evaporator configuration	√		
Insulation	Improved insulating material and/or thicker insulation around the evaporator compartment.	√	√	
Refrigeration Line	Larger diameter suction line	√	√	RCUs with remote compressor.
Potable Water	Reduced potable water flow	√		
	Drain water thermal exchange	√		

a. Reduced Potable Water Flow for Continuous Type Ice Makers

Howe questioned why the list of design options for continuous type ice makers did not include reduced potable water flow, considering that such machines can have clean or flush cycles. (Howe, Public Meeting Transcript, No. 42 at pp. 30–31)

DOE notes that some continuous machines may include controls or design options that may reduce potable water flow. Therefore, DOE has included reduced potable water flow for continuous machines as one of its design options.

DOE also notes that the test procedure for continuous type ice makers calls for three 14.4-minute long measurements of ice-making production and energy use. The flushing cycles in continuous type ice makers typically do not occur within these measurement periods and the water used for flushing is not captured in the energy use metric; hence, because the engineering analysis cannot evaluate an improvement that occurs outside of the test procedure, this aspect of equipment operation was screened out in the screening analysis.

b. Alternative Refrigerants

Scotsman asked whether hydrocarbon refrigerants were considered as a design option. (Scotsman, Public Meeting Transcript, No. 42 at p. 32) Manitowoc responded that hydrocarbon refrigerants should not be considered in the analysis because they have not been approved for use by the U.S. Environmental Protection Agency's (EPA's) Significant New Alternatives Policy (SNAP). (Manitowoc, Public Meeting Transcript, No. 42 at p. 32) AHRI added that refrigerants that are used as alternatives to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) must be approved by both the EPA and the SNAP program. AHRI noted that, although some hydrocarbon refrigerants were approved for use in residential refrigerators and some commercial refrigerated display cases, they have not been approved for ice makers. (AHRI, Public Meeting Transcript, No. 42 at pp. 32–33)

Manitowoc observed that future legislation may require the use of refrigerants that, based on their current status, have the potential to decrease the energy efficiency of ice makers. (Manitowoc, Public Meeting Transcript, No. 42 at p. 33)

As indicated by AHRI, hydrocarbon refrigerants have not yet been approved by the EPA SNAP program and hence cannot be considered as a technology option in DOE's analysis. DOE also notes that, while it is possible that hydrofluorocarbon (HFC) refrigerants currently used in automatic commercial ice makers may be restricted by future legislation, DOE cannot speculate on such future laws and can only consider in its rulemakings laws that have been enacted. This is consistent with past DOE rulings, such as in the 2011 direct final rule for room air conditioners. 76 FR 22454 (April 21, 2011). To the extent that there has been experience within the industry, domestically or internationally, with the use of alternative low-GWP refrigerants, DOE requests any available information, specifically cost and efficiency information relating to use of alternative refrigerants. DOE acknowledges that there are government-wide efforts to reduce emissions of HFCs, and such actions are being pursued both through international diplomacy as well as domestic actions. DOE, in concert with other relevant agencies, will continue to work with industry and other stakeholders to identify safer and more sustainable alternatives to HFCs while evaluating energy efficiency standards for this equipment.

C. Screening Analysis

In the technology assessment section of this NOPR, DOE presents an initial

list of technologies that can improve the energy efficiency of automatic commercial ice makers. The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which of these technologies is suitable for further consideration in its analyses. To do this, DOE uses four screening criteria—design options will be removed from consideration if they are not technologically feasible; are not practicable to manufacture, install, or service; have adverse impacts on product utility or product availability; or have adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, sections (4)(a)(4) and (5)(b) See chapter 4 of the NOPR TSD for further discussion of the screening analysis. Additional screening criteria include whether a design option is expected to save energy or whether savings can be measured (using the prescribed test procedure), and whether an option is a proprietary technology or whether it is widely available to all manufacturers. Table IV.6 shows the EPCA criteria and additional criteria used in this screening analysis, and the design options evaluated using the screening criteria.

In the NOPR phase, DOE made several changes to the treatment of design options from the preliminary analysis approach. These changes included:

- Adding a design option to allow for growth of the unit to increase the size of the condenser and/or evaporator;
- Adjusting assumptions regarding maximum compressor EER levels based on additional research and confidential input from manufacturers;
- Adjusting potable water consumption rates for batch type ice makers subject to a floor that represents the lowest potable water consumption rate that would be expected to flush out dissolved solid reliably;
- Adding a design option to allow condenser growth in water-cooled condensers; and
- Adding a drain water heat exchanger design option.

Table IV.6 Screening Justification

Design Option	EPCA Criteria for Screening				Not Considered in the Analysis for Other Reasons		
	Technological Feasibility	Practicability to Manufacture, Install, and Service	Adverse Impacts on Product Utility	Adverse Impacts on Health and Safety	No Energy Savings or Savings not Measurable	Test Procedure Efficiency Metric Does Not Capture Savings	Proprietary Technology
Compressor Part Load Operation	√					√	
Enhanced Fin Surfaces					√		
Brazed Plate Condenser					√		
Microchannel Condenser					√		
Technology Options to Reduce Evaporator Thermal Cycling			√				√
Technology Options Which Reduce Harvest Meltage or Reduce Harvest Time					√		
Tube Evaporator Configuration			√				
Improved or Thicker Insulation					√		
Larger Diameter Suction Line			√				
Smart Technologies					√		

Table IV.7 contains the list of technologies that remained after the screening analysis.

TABLE IV.7—TECHNOLOGY OPTIONS FOR AUTOMATIC COMMERCIAL ICE MAKERS THAT WERE SCREENED IN

Technology options		Batch ice makers	Continuous ice makers	Notes
Compressor	Improved compressor efficiency	√	√	
Condenser	Increased surface area	√	√	
	Increased air flow	√	√	Air-cooled only.
	Increased water flow	√	√	Water-cooled only.
Fans and Fan Motors	Higher efficiency condenser fans and fan motors.	√	√	Air-cooled only.
Other Motors	Improved auger motor efficiency		√	
	Improved pump motor efficiency	√		
Evaporator	Larger evaporator surface area	√	√	
Potable Water	Reduced potable water flow	√		
	Drain water thermal exchange	√		

a. Tube Evaporator Design

Among the technologies that DOE considered were tube evaporators that use a vertical shell and tube configuration in which refrigerant evaporates on the outer surfaces of the tubes inside the shell, and the freezing water flows vertically inside the tubes to create long ice tubes that are cut into smaller pieces during the harvest process. Some of the largest automatic commercial ice makers in the RCU–NRC–Large–B and the IMH–W–Large–B equipment classes use this technology. However, DOE concluded that implementation of this technology for smaller capacity ice makers would significantly impact equipment utility, due to the greater weight and size of these designs, and to the altered ice shape. DOE noted that available tube icemakers (for capacities around 1,500 lb ice/24 hours and 2,200 lb ice/24 hours) were 150 to 200 percent heavier than comparable cube ice makers. Based on the impacts to utility of this technology, DOE screened out tube evaporators from consideration in this analysis.

b. Low Thermal Mass Evaporator Design

DOE's preliminary analysis did not consider low thermal mass evaporator designs. Reducing evaporator thermal mass of batch type ice makers reduces the heat that must be removed from the evaporator after the harvest cycle, and thus decreases refrigeration system energy use. DOE indicated during the preliminary analysis that it was concerned about the potential proprietary status of such evaporator designs, since DOE is aware of only one manufacturer that produces equipment with such evaporators. DOE requested comment on the proprietary status of low-thermal-mass evaporator designs in general, and the design used by the cited manufacturer (Hoshizaki) in particular.

Scotsman commented that Hoshizaki has recently patented or attempted to patent modifications to improve evaporator efficiency and noted that using such evaporator designs would be difficult for other manufacturers because it would require an expensive and risky redesign of entire product lines. (Scotsman, Public Meeting Transcript, No. 42 at pp. 35–36; Scotsman, No. 46 at pp. 2–3) However, Manitowoc observed that, although intellectual property is certainly a concern, there may be ways to implement this low thermal mass evaporator technology without exactly duplicating Hoshizaki's designs. (Manitowoc, Public Meeting Transcript, No. 42 at p. 36)

Hoshizaki commented that its batch type evaporators do indeed contain intellectual property in past and future designs, adding that the tooling costs for manufacturing these evaporators would be too expensive for competing manufacturers to replicate. (Hoshizaki, No. 53 at p. 2)

AHRI recommended that DOE eliminate proprietary designs from consideration and limit its analysis to technologies that are available to all manufacturers in the ice maker industry. (AHRI, No. 49 at p. 4)

Manitowoc commented that, in addition to the obvious legal issues associated with favoring a proprietary design held by a single manufacturer, DOE's analysis tools are also incapable of predicting the potential benefit of low thermal mass evaporators, which are difficult to model accurately. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 36–37 and No. 54 at p. 3) Manitowoc also warned that the impact of this technology on one ice maker should not simply be extrapolated to other machines and that oversimplification of this analysis would affect the predicted efficiency benefits of each technology level. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 36–37) Manitowoc added that customers are very loyal to the style of ice that they get from its machines and that all manufacturers keep customer loyalty in mind when designing their evaporators. Consequently, Manitowoc expressed concern that a new evaporator design could force manufacturers to change the style of their ice, which could drive down sales and result in a low overall payback despite the improved energy performance, and therefore Manitowoc concluded that DOE should not establish higher efficiency levels based on this design option. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 36–37 and No. 54 at p. 3)

On the basis of its proprietary status, DOE concludes that its initial decision to screen out low-thermal-mass evaporator technology was appropriate. Thus, DOE has screened out this technology in its NOPR analysis.

c. Drain Water Heat Exchanger

Batch ice makers can benefit from drain water thermal exchange that cools the potable water supply entering the sump, thereby reducing the energy required to cool down and freeze the water. Technological feasibility is demonstrated by one commercially available drain water thermal heat exchanger that is currently sold only for aftermarket installation. This product is designed to be installed externally to the

ice maker, and both drain water and supply water are piped through the device.[30]

In the preliminary analysis, DOE considered whether such a component could be considered to be part of an ice maker as defined in EPCA. The EPCA definition for automatic commercial ice makers states that the ice maker consists of a condensing unit and ice-making section operating as an integral unit, with means for making and harvesting ice. (42 U.S.C. 6311(19)) The definition allows that the ice maker may include means for storing ice, dispensing ice, or storing and dispensing ice. None of the subcomponents of the ice maker listed in the definition could be interpreted as referring to heat exchangers for drain water thermal exchange. DOE notes that an ice maker can still make ice without a drain water heat exchanger; hence, the drain water heat exchanger cannot be considered an integral part of the equipment. For these reasons, DOE concluded during the preliminary analysis that external drain water heat exchangers, the only configuration of this technology for which technological feasibility is demonstrated, should be screened out, and requested comments on this approach.

NPCC asserted that DOE should consider drain water thermal exchange as a technology option. NPCC proposed that reducing the inlet water temperature could enable an ice maker to maintain the same capacity without increasing the overall size of the unit. Although NPCC does not manufacture ice makers, it acknowledged having seen this technology implemented in other applications, such as water heating, without reducing capacity or increasing overall size. (NPCC, Public Meeting Transcript, No. 42 at pp. 37–38)

Earthjustice commented that DOE's rationale for screening out drain water thermal heat exchangers was defective on both legal and factual grounds. In the preliminary analysis TSD, DOE suggested that externally mounted drain water heat exchangers would fall outside EPCA's definition of automatic commercial ice makers, and that DOE therefore had no authority to consider them in this rulemaking. Earthjustice argued that this reading twists the statutory definition's role in identifying which products constitute the ''automatic commercial ice makers'' subject to efficiency standards into a ''Dos and Don'ts'' list from Congress as to which elements of ice makers DOE may examine when amending the standards that Congress enacted. Congress adopted standards that apply to the ice maker as a whole, and Earthjustice asserted that there is therefore no basis to conclude that EPCA intended to prohibit DOE from looking holistically at this equipment when amending the statutory standards. Earthjustice added that, if every technological innovation that improved the efficiency of a covered product needed to be specifically mentioned in the statute's definition of the product, there would be no need for a screening analysis. Earthjustice also noted that, in previous rulemakings, DOE consistently recognized that components that improve the efficiency of covered products merit consideration in the DOE's analyses, notwithstanding that they may be unnecessary to the basic function performed by the product, not referred to in the statutory definition applicable to the product, or external to the case or envelope of the device. Finally, Earthjustice commented that DOE's assertion that internally mounted drain heat exchangers would necessarily increase cabinet size is not true for all ice maker models. Moreover, Earthjustice stated, DOE has not considered options such as microchannel heat exchangers, which would increase both machine efficiency as well as available cabinet space within the ice maker. (Earthjustice, No. 47 at pp. 1–4)

DOE has reconsidered its preliminary suggestion that external drain water heat exchangers cannot be considered part of an ice maker simply because they are not specifically mentioned in the EPCA definition, now concluding that they can be considered as a design option and to be part of a basic model ice maker, assuming that the drain water heat exchanger is sold and shipped with the unit and that the installation and operating instructions clearly reinforce this inclusion by detailing the installation requirements for the heat exchanger.

Thus, DOE is including this technology as a design option. As NPCC noted, externally mounted drain water heat exchangers would provide energy savings by using ''waste'' water to cool the incoming potable water supply, thus reducing the amount of energy necessary to freeze the water into ice. Whereas internal heat exchangers may require increased cabinet size to fit within the ice maker, allowing external heat exchangers as a design option would prevent size increase.

DOE has concluded that drain water heat exchangers, both internally mounted and externally mounted, are design options that can increase the energy efficiency of automatic commercial ice makers. The current test procedures would give manufacturers credit for efficiency improvement of drain water heat exchangers, including externally mounted drain water heat exchangers as long as they are provided with the machine and the installation instructions for the machine indicate that the heat exchangers are part of the machine and must be installed as part of the overall installation.

d. Design Options That Necessitate Increased Cabinet Size

Some of the design options considered by DOE in its technology assessment could require an increased cabinet size. Examples of such design options include increasing the surface area of the evaporator or condenser, or both. Larger heat exchangers would enable the refrigerant circuit to operate with an increased evaporating temperature and a decreased condensing temperature, thus reducing the temperature lift imposed on the refrigeration system and hence the compressor power input. In some cases the added refrigerant charge associated with increasing heat exchanger size could also necessitate the installation of a refrigerant receiver to ensure proper refrigerant charge management in all operating conditions for which the unit is designed, thus increasing the need for larger cabinet size.

In the preliminary analysis, DOE did not consider design options that increase cabinet size, and it requested comment on this approach. (DOE, Public Meeting Presentation, No. 29 at p. 35)

Earthjustice observed that this issue, in which certain design options necessitate larger products and therefore larger installation costs, is common in rulemakings. Despite the potential difficulties that increased size could pose for ice maker manufacturers and customers, Earthjustice commented that the preliminary analysis is not necessarily the stage of the rulemaking in which such design options should be ruled out. (Earthjustice, Public Meeting Transcript, No. 42 at pp. 46–47)

At the February 2012 preliminary analysis public meeting, Manitowoc pointed out that the size of ice makers is severely limited in certain applications, which would make it difficult for manufacturers to implement design changes that reduce energy but require an increase in size. Manitowoc warned that DOE should not assume that all ice maker manufacturers can increase the sizes of their ice machines to meet standards. In many cases,

[30] A.J. Antunes and Co. *Vizion Product Catalog.* (Last accessed May 18, 2013.) <*www.ajantunes.com/VIZION/VIZIONProductCatalog/tabid/229/ProdID/481/CatID/280/language/en-US/Default.aspx*>

according to Manitowoc, increasing the size may result in higher installation costs, which are not considered in DOE's analysis. Manitowoc and AHRI both noted that a high percentage of the ice machine business involves replacing old units and that the size of new ice makers is therefore dictated by the size of the products being replaced. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 57–59 and No. 54 at p. 2; AHRI, No. 49 at p. 2) AHRI also commented that customers continue to demand smaller ice machines as the space used to house them competes against more ''usable'' spaces, such as hotel rooms. Hoshizaki agreed that the industry was moving toward smaller ice makers and also recommended that DOE limit cabinet size. Consequently, Manitowoc, AHRI, and Hoshizaki all commented that DOE should not consider design options that increase cabinet size in its analysis. (Manitowoc, No. 54 at p. 2; AHRI, No. 49 at p. 2; Hoshizaki, No. 53 at p. 1)

Scotsman commented that, for products at the top of the capacity range within a given standard cabinet size, manufacturers cannot increase the size of internal components such as air-cooled condensers without increasing the machines' cabinet size. This would make the machines less competitive because they would no longer physically fit in certain applications, according to Scotsman. (Scotsman, Public Meeting Transcript, No. 42 at pp. 87–88) Moreover, Scotsman noted that assessing the impact of a technology on one type of machine and applying it to other types can be difficult and inaccurate. For example, while increasing condenser area could be simple for a 300-lb machine, it may require retooling several parts, in addition to increasing cabinet size and thus also increasing overall costs, to make the same condenser growth fit in a 600-lb machine. (Scotsman, No. 46 at p. 2) Finally, Scotsman stated that increasing the size of ice makers will cause cabinet costs to increase. (Scotsman, Public Meeting Transcript, No. 42 at p. 64) Therefore, Scotsman agreed with its fellow manufacturers that DOE should avoid design options requiring cabinet size increases. (Scotsman, No. 46 at p. 4)

Manitowoc commented that it is rare for manufacturers to have data regarding available space, ventilation, or other variables regarding the final installation of their products. Moreover, Manitowoc added that forcing an ice maker with larger cabinet size into an existing space that is too small for it would exacerbate condenser air recirculation, which decreases its efficiency and reliability. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 62–63)

However, Scotsman also commented that an ice maker's energy use typically decreases as its size increases, meaning that it may be more efficient to use an oversized machine than one that has been downsized. (Scotsman, Public Meeting Transcript, No. 42 at pp. 61–62)

Howe commented that the physical size of an automatic commercial ice maker has no effect on its efficiency or its run time. According to Howe, the run time of ice makers is a function of their productive capacity as well as the size of their ice storage bins, because ice production automatically ceases when the bin is full. Howe added that regulating the physical size of ice makers may limit the use of new, more efficient technologies in the future. Therefore, Howe urged DOE not to consider limiting the physical size of ice makers. (Howe, No. 51 at pp. 1–2)

NEEA/NPCC also urged DOE not to consider limiting ice maker cabinet size in the rulemaking. NEEA/NPCC pointed out that, although improving the efficiency of an ice maker may require increasing the size of its components, many ice makers have sufficient room in their cabinets to accommodate such size increases. According to NEEA/NPCC, advanced evaporator designs could be used to meet efficiency and capacity requirements for ice makers whose evaporators already require the full cabinet size. (NEEA/NPCC, No. 50 at p. 2)

CA IOUs agreed that DOE should not screen out design options that would require an increase in cabinet size. CA IOUs referred to a limited field study whose results indicated to CA IOUs that larger ice-making equipment may be accommodated in most situations. CA IOUs added that there is no evidence as to whether there may be another space in installation locations that could accommodate a larger ice maker. Therefore, CA IOUs asserted that, in the absence of a survey or field study that shows size constraints to be an issue, DOE should not use size to screen out design options. (CA IOUs, No. 56 at p. 3)

Based on these comments from stakeholders, DOE understands that automatic commercial ice makers are often used in applications where space is very limited. DOE has not received any data supporting or refuting the characterization that installation locations may be able to accommodate larger icemakers.

Although CA IOUs cited a study indicating that installation locations may be able to accommodate larger ice makers,[31] the sample size of this study is extremely small and is not necessarily representative of the entire automatic commercial ice maker market. The study does not present any findings on the size constraints and allowances seen in the inspected products, and the pictures themselves are inconclusive. DOE believes it would be difficult to support any size-based conclusions using this study.

Particularly because replacements comprise such a large portion of the ice maker industry, ice makers affected by the proposed standard must maintain traditional standard widths and depths. Allowing design options that necessitate physical size increases may push certain capacity units beyond their current standard dimensions and would thus force the use of lower-capacity machines in replacement applications, which would significantly reduce equipment utility.

On the other hand, screening out size-increasing design options would eliminate from consideration technologies that could significantly reduce the energy consumption of automatic commercial ice makers.

Consideration of design options that increase the size of ice makers is strongly related to consideration of size-constrained design options. DOE notes that, while stakeholders have pointed out that many automatic ice maker applications are space-constrained, as described in section IV.B.1.a, DOE does not have access to sufficiently-detailed data that would either indicate what percentage of applications could not allow size increase, or be the basis to set size limits for space-constrained classes. Thus, DOE has also decided not to create size-constrained equipment classes.

DOE also notes that there are a wide range of product sizes within most equipment classes, and that DOE must seek out the most-efficient configurations. DOE noted that the equipment it purchased for reverse engineering inspections reflected a general trend that more-efficient units were often larger, had larger condensers, and in some cases had larger evaporators. Based on DOE's market study and equipment inspections, larger chassis sizes appeared often to be a means of achieving higher efficiencies.

Thus, DOE is including this package-size-increasing technologies as design options in the NOPR analysis. DOE only

[31] Karas, A. *A Field Study to Characterize Water And Energy Use of Commercial Ice-Cube Machines and Quantify Savings Potential.* December 2007. Fisher-Nickel, Inc., San Ramon, CA. <*www.fishnick.com/publications/fieldstudies/Ice_Machine_Field_Study.pdf*>

applied these design options for those equipment classes where the representative baseline unit had space to grow relative to the largest units on the market. The equipment growth allowed for larger heat exchangers to increase equipment efficiency.

For equipment classes with remote condensers, DOE only applied this design option to the condenser package, and not to the ice-making head that is placed indoors. In general, DOE only considered increasing the size of the evaporator whenever the product inspections (see section IV.D.4.e) indicated that it was needed to increase efficiency.

In addition, DOE recognizes that space constraints are more critical for SCU units; hence, DOE did not consider package size growth for SCU equipment classes.

Table IV.8 indicates for which analyzed equipment classes DOE considered chassis growing design options.

TABLE IV.8—ANALYZED EQUIPMENT CLASSES WHERE DOE ANALYZED SIZE-INCREASING DESIGN OPTIONS

Unit	Rated harvest rate *lb ice/24 hours*	Used design options that increased size?
IMH–A–Small–B	300	Yes.
IMH–A–Large–B (med)	800	Yes.
IMH–A–Large–B (large)	1,500	No.
IMH–W–Small–B	300	Yes.
IMH–W–Med–B	850	No.
IMH–W–Large–B	2,600	No.
RCU–XXX–Large–B (med)	1,500	For the remote condenser, but not for the ice-making head.
RCU–XXX–Large–B (large)	2,400	For the remote condenser, but not for the ice-making head.
SCU–A–Small–B	110	No.
SCU–A–Large–B	200	No.
SCU–W–Large–B	300	No.
IMH–A–Small–C	310	No.
IMH–A–Large–C (med)	820	No.
SCU–A–Small–C	110	No.

Table IV.9 shows the size increases that DOE considered in the analysis. DOE only considered these size increases when a unit existed on the market that was larger than the baseline unit. DOE based the new chassis sizes on the sizes of current units on the market.

TABLE IV.9—DESCRIPTION OF SIZE INCREASE DESIGN OPTIONS IN THE ENGINEERING ANALYSIS

Equipment class	Equipment type	Size descriptor	Height *inches*	Width *inches*	Depth *inches*	Volume *cubic feet*
IMH–A–Small–B	IMH	Baseline	16.5	30	24.5	7.02
		Growth	21.5	30	24.5	9.14
IMH–A–Large–B (Med).	IMH	Baseline	26	30	24	10.83
		Growth	29	30	24	12.08
IMH–W–Small–B	IMH	Baseline	20	30	24	8.33
		Growth	23.5	30	23.5	9.59

Further information on this analysis is available in chapter 5 of the NOPR TSD.

e. Microchannel Heat Exchangers

NEEA/NPCC, ASAP, and Earthjustice all recommended that DOE include microchannel heat exchanger technology in its examination of design options for improving condenser and evaporator efficiency. NEEA/NPCC noted that this technology has been used in heat exchangers for air handling equipment for years and it would allow for increased efficiency or greater ice production capacity. (NEEA/NPCC, No. 50 at p. 2) ASAP commented that, although it is not aware of ice makers on the market that incorporate microchannel heat exchangers, ice maker manufacturers who have tested prototype units that implement this technology have noticed significant efficiency improvements. (ASAP, No. 52 at p. 1) Finally, Earthjustice noted that microchannel heat exchanger technology would increase both machine efficiency and available cabinet space within the ice maker. (Earthjustice, No. 47 at pp. 1–4)

DOE has not found evidence that this technology is cost-effective. Moreover, through discussions with manufacturers, DOE has learned of no instances of energy savings associated with the use of microchannel heat exchangers in ice makers. Manufacturers also noted that the reduced refrigerant charge associated with microchannel heat exchangers can be detrimental to the harvest performance of batch type ice makers, as there is not enough charge to transfer heat to the evaporator from the condenser.

DOE contacted microchannel manufacturers to determine whether there were savings associated with use of microchannel heat exchangers in automatic commercial ice makers. These microchannel manufacturers noted that investigation of microchannel was driven by space constraints rather than efficiency.

Because the potential for energy savings is inconclusive, based on DOE analysis as well as feedback from manufacturers and heat exchanger suppliers, and based on the potential utility considerations associated with compromised harvest performance in batch type ice makers associated with this heat exchanger technology's reduced refrigerant charge, DOE

screened out microchannel heat exchangers as a design option in this rulemaking.

f. Smart Technologies

CA IOUs recommended that DOE also consider including ''smart'' technologies as design options that will go beyond simple energy savings by capturing demand reductions as well. To support this proposition, CA IOUs referenced a study showing that, for automatic commercial ice-making equipment, there are 450 megawatts of demand reduction potential in California alone, indicating a significant nationwide possibility for reducing the energy demand associated with ice makers. If DOE does not include ''smart'' technologies as design options, CA IOUs instead asked that DOE comment on whether states will be allowed to implement such design option requirements for ice-making equipment. (CA IOUs, No. 56 at pp. 5–6)

While there may be energy demand benefits associated with use of ''smart technologies'' in ice makers in that they reduce energy demand (*e.g.,* shift the refrigeration system operation to a time of utility lower demand), DOE is not aware of any commercialized products or prototypes that also demonstrate improved energy efficiency in automatic commercial ice makers. Demand savings alone do not impact energy efficiency, and DOE cannot consider technologies that do not offer energy savings as measured by the test procedure. Since the scope of this rulemaking is to consider energy conservation standards that increase the energy efficiency of automatic commercial ice makers, not how they operate, for example, in relation to utility demand, this technology option has been screened out because it does not save energy as measured by the test procedure.

g. Screening Analysis: General Comments

Howe suggested that DOE gather information on a wider variety of design types of both batch and continuous type ice makers before completing its analyses, noting that DOE may have prematurely screened out design options simply because they had adverse effects on the ice makers within the small range of design parameters for which DOE collected data. (Howe, No. 51 at p. 4)

Howe has not provided specific examples of technologies that it has claimed that DOE prematurely screened out, so DOE is not in a position to respond. During the NOPR analysis, DOE analyzed additional units and accounted for this additional data in its engineering analysis. DOE considered a wide range of design types for ice makers, and screened out technologies as described in section IV.D.

D. Engineering Analysis

The engineering analysis determines the manufacturing costs of achieving increased efficiency or decreased energy consumption. DOE historically has used the following three methodologies to generate the manufacturing costs needed for its engineering analyses: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

As discussed in the Framework document and preliminary analysis, DOE conducted the engineering analyses for this rulemaking using a combined efficiency level/design option/reverse engineering approach to developing cost-efficiency curves for automatic commercial ice makers. DOE established efficiency levels defined as percent energy use lower than that of baseline efficiency products. DOE's analysis is based on the efficiency improvements associated with groups of design options. Also, DOE developed manufacturing cost models based on reverse engineering of products to develop a baseline manufacturer production cost (MPC) and to support calculation of the incremental costs associated with improvement of efficiency.

DOE selected a set of 25 equipment classes to analyze directly in the engineering analysis. To develop the analytically derived cost-efficiency curves, DOE collected information from various sources on the manufacturing cost and energy use reduction characteristics of each of the design options. DOE reviewed product literature, tested and conducted reverse engineering of 39 ice makers, and interviewed component vendors of compressors and fan motors. DOE also conducted interviews with manufacturers during the preliminary analysis. Additional details of the engineering analysis are available in chapter 5 of the NOPR TSD and a copy of the engineering questionnaire is reproduced in appendix 12A of the NOPR TSD.

Cost information from the vendor interviews and discussions with manufacturers provided input to the manufacturing cost model. DOE determined incremental costs associated with specific design options from both vendor information and the cost model. DOE modeled energy use reduction using the FREEZE program, which was developed in the 1990s and upgraded as part of the preliminary analysis. The reverse engineering, vendor interviews, and manufacturer interviews provided input for the energy analysis. The final incremental cost estimates and the energy modeling results together constitute the energy efficiency curves presented in the NOPR TSD chapter 5.

DOE also considered conducting the engineering analysis using an efficiency level approach based on rated and/or measured energy use and manufacturing cost estimates based on reverse engineering data. DOE completed efficiency level analyses for several equipment classes but concluded that this approach was not viable, because the analysis suggested that cost would be reduced for higher efficiency designs for several of the equipment classes. This analysis is discussed in section IV.D.4.e and in chapter 5 of the NOPR TSD.

1. Representative Equipment for Analysis

In performing its engineering analysis, DOE selected representative units for 12 equipment class to serve as analysis points in the development of cost-efficiency curves. In selecting these units, DOE selected models that were generally representative of the typical offerings produced within the given equipment class. DOE sought to select models having features and technologies typically found in the minimum efficiency equipment currently available on the market, but selected some models having features and technologies typically found in the highest efficiency equipment currently available on the market.

2. Efficiency Levels

a. Baseline Efficiency Levels

EPCA, as amended by the EPACT 2005, prescribed the following standards for batch type ice makers, shown in Table IV.10, effective January 1, 2010. (42 U.S.C. 6313(d)(1)) For the engineering analysis, DOE used the existing batch type equipment standards as the baseline efficiency level for the

equipment types under consideration in this rulemaking. Also, DOE applied the standards for equipment with harvest capacities up to 2,500 lb ice/24 hours as baseline efficiency levels for the larger batch type equipment with harvest capacities between 2,500 and 4,000 lb ice/24 hours, which are currently not regulated. DOE applied two exceptions to this approach, as discussed below.

For the IMH–W–Small–B equipment class, DOE slightly adjusted the baseline energy use level to close a gap between the IMH–W–Small–B and the IMH–W–Medium–B equipment classes. For equipment in the IMH–A–Large–B equipment class with harvest capacity above 2,500 lb ice per 24 hours, DOE chose a baseline efficiency level equal to the current standard level at the 2,500 lb ice per 24 hours capacity. In its analysis, DOE is treating the constant portion of the IMH–A–Large–B equipment class as a separate equipment class, IMH–A–Extended–B. Section IV.C contains more details of these adjustments.

DOE is not proposing adjustment of maximum condenser water use standards for batch type ice makers. First, DOE's authority does not extend to regulation of water use, except as explicitly provided by EPCA. Second, DOE determined that increasing condenser water use standards to allow for more water flow in order to reduce energy use is not cost-effective. The details of this analysis are available in chapter 5 of the NOPR TSD.

For water-cooled batch equipment with harvest capacity less than 2,500 lb ice per 24 hours, the baseline condenser water use is equal to the current condenser water use standards for this equipment.

For water-cooled equipment with harvest capacity greater than 2,500 lb ice per 24 hours, DOE proposes to set maximum condenser water standards equal to the current standard level for the same type of equipment with a harvest capacity of 2,500 lb ice per 24 hours—the proposed standard level would not continue to drop as harvest capacity increases, as it does for equipment with harvest capacity less than 2,500 lb ice per 24 hours.

TABLE IV.10—BASELINE EFFICIENCY LEVELS FOR BATCH ICE MAKERS

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice*	Maximum condenser water use * *gal/100 lb ice*
Ice-Making Head	Water	<500	7.79–0.0055H ** †	200–0.022H.
		≥500 and <1,436	5.58–0.0011H	200–0.022H.
		≥1,436	4.0	145.
	Air	<450	10.26–0.0086H	Not Applicable.
		≥450 and <2,500	6.89–0.0011H	Not Applicable.
		≥2,500	4.1	Not Applicable.
Remote Condensing (but not remote compressor).	Air	<1,000	8.85–0.0038H	Not Applicable.
		≥1,000	5.10	Not Applicable.
Remote Condensing and Remote Compressor.	Air	<934	8.85–0.0038H	Not Applicable.
		≥934	5.30	Not Applicable.
Self-Contained	Water	<200	11.4–0.019H	191–0.0.
		≥200	7.60	For <2,500: 191–0.0315H For ≥2,500: 112.
	Air	<175	18.0–0.0469H	Not Applicable.
		≥175	9.80	Not Applicable.

* Water use is for the condenser only and does not include potable water used to make ice.
** H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate. Source: 42 U.S.C. 6313(d).
† There is a gap between the existing IMH–W–Small–B standard and the IMH–W–Medium–B standard. The baseline equation for the IMH–W–Small–B equipment class was adjusted from 7.8—0.0055*H to 7.79—0.0055*H to close this gap.

Currently there are no DOE energy standards for continuous type ice makers. During the preliminary analysis, DOE developed baseline efficiency levels using energy use data available from several sources, as discussed in chapter 3 of the preliminary TSD. DOE chose baseline efficiency levels that would be met by nearly all ice makers represented in the databases. Also, because energy use reported at the time DOE was preparing the preliminary analysis did not include the hardness adjustment prescribed by the new test procedure,[32] DOE made these adjustments to the data. At that time, hardness data was also not generally available for ice makers; therefore, DOE used assumptions of 0.7 ice hardness for flake ice makers and 0.85 for nugget ice makers to make the hardness adjustments, thus estimating energy use as it would be measured by the new test procedure. 77 FR 3404 (Jan. 24, 2012). DOE selected harvest capacity break points (harvest capacities at which the slopes of the trial baseline efficiency levels change) for all but the self-contained equipment classes consistent with those selected by the Consortium for Energy Efficiency (CEE) for their new Tier 2 efficiency level for flake ice makers. Note that DOE did not also adopt the CEE energy use levels for any of its incremental efficiency levels because the CEE energy use levels do not incorporate adjustment of the measured energy use based on ice hardness.

For the NOPR analysis, DOE used newly available information published in the AHRI Directory of Certified Product Performance, the California Energy Commission, the ENERGY STAR program, and vendor Web sites, to update its icemaker ratings database (''DOE icemaker ratings database''). In 2012, AHRI published equipment ratings for many continuous type ice makers, including ice hardness factors calculated as prescribed by ASHRAE 29–2009, which is incorporated by reference in the new DOE test procedure. DOE recreated its database for continuous type ice makers based on the available AHRI data, considering only the ice makers for which AHRI ratings for ice hardness were available. DOE also adjusted the harvest capacity break points for the continuous equipment classes based on the new data.

The baseline efficiency levels for continuous type ice makers are presented in Table IV.11. They are

[32] Ice hardness is a term used for ice produced by continuous type ice makers, describing what percentage of the output is hard ice (as compared to water).

compared with the ice maker energy use data in chapter 3 of the NOPR TSD. For the remote condensing equipment, the large-capacity remote compressor and large-capacity non-remote compressor classes have been separated and are different by 0.2 kWh/100 lb, identical to the batch equipment differential. This differential is also discussed briefly in section IV.B.1.e. DOE requests comments on the development of efficiency levels for continuous type ice makers and whether the selected levels appropriately represent baseline equipment.

TABLE IV.11—BASELINE EFFICIENCY LEVELS FOR CONTINUOUS ICE MAKER EQUIPMENT CLASSES

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice**	Maximum condenser water use * *gal/100 lb ice*
Ice-Making Head	Water	Small (<900)	8.1–0.00333H	160–0.0176H.
		Large (≥900)	5.1	≤2,500: 160–0.0176H; >2,500: 116.
	Air	Small (<700)	11.0–0.00629H	Not Applicable.
		Large (≥700)	6.6	Not Applicable.
Remote Condensing (Remote Compressor).	Air	Small (<850)	10.2–0.00459H	Not Applicable.
		Large (≥850)	6.3	Not Applicable.
Remote Condensing (Non-remote Compressor).	Air	Small (<850)	10.0–0.00459H	Not Applicable.
		Large (≥850)	6.1	Not Applicable.
Self-Contained	Water	Small (<900)	9.1–0.00333H	153–0.0252H.
		Large (≥900)	6.1	≤2,500: 153–0.0252H; >2,500: 90.
	Air	Small (<700)	11.5–0.00629H	Not Applicable.
		Large (≥700)	7.1	Not Applicable.

* H = rated harvest rate in lb ice/24 hours.

b. Incremental Efficiency Levels

For each of the nine analyzed batch type ice-making equipment classes, DOE established a series of incremental efficiency levels for which it has developed incremental cost data and quantified the cost-efficiency relationship. DOE chose a set of analyzed equipment classes that would be representative of all batch type ice-making equipment classes, and grouped non-analyzed equipment classes with analyzed equipment classes accordingly in the downstream analysis. Table IV.12 shows the selected incremental efficiency levels.

For the IMH–A–Large–B equipment class, DOE is adopting its suggested approach from the preliminary analysis meeting. (DOE, Preliminary Analysis Public Meeting Presentation, No. 42 at p. 29) As part of this approach, DOE is treating the largest units as an extended equipment class (IMH–A–Extended–B), basing the analysis for this equipment class on the analysis for a 1,500 lb ice/24 hour IMH–A–Large–B unit. When setting TSLs, DOE is considering the 800 lb ice/24 hour IMH–A–Large–B analysis separately from the 1,500 lb ice/24 hour analysis.

TABLE IV.12—INCREMENTAL EFFICIENCY LEVELS FOR BATCH ICE MAKER EQUIPMENT CLASSES

Equipment type *	Rated harvest rate *lb ice/24 hours*	EL 2 **	EL 3 *(%)*	EL 4 *(%)*	EL 5 *(%)*	EL 6 *(%)*
IMH–W–Small–B	<500	10%	15	20	25	.....
IMH–W–Med–B	≥500 and <1,436	10%	15	20	.....	.....
IMH–W–Large–B	≥1,436	10%	15	20	.....	.....
IMH–A–Small–B	<450	10% (E–STAR †)	15	20	25	30
IMH–A–Large–B ‡	≥450	10% (E–STAR †)	15	20	25	.....
RCU–NRC–Small–B ***	<1,000	9% (E–STAR †)	15	20	.....	.....
RCU–NRC–Large–B	≥1,000	9% (E–STAR †)	15	20	.....	.....
RCU–RC–B	<934	9% (E–STAR †)	15	20	.....	.....
	≥934	9% (E–STAR †)	15	20	.....	.....
SCU–W–Small–B ***	<200	7%	15	20	25	30
SCU–W–Large–B	≥200	7%	15	20	25	30
SCU–A–Small–B	<175	7% (E–STAR †)	15	20	25	30
SCU–A–Large–B	≥175	7% (E–STAR †)	15	20	25	30

* See Table III.1 for a description of these abbreviations.
** EL = efficiency level; EL 1 is the baseline efficiency level, while EL 2 through EL 6 represent increased efficiency levels.
*** These equipment classes were not directly analyzed.
† New ENERGY STAR levels became effective on February 1, 2013. These levels represent the ENERGY STAR levels prior to February 1, 2013.
‡ The IMH–A–Large–B levels were analyzed at the 800 lb ice/24 hour size and the 1,500 lb ice/24 hour size, and the 1,500 lb ice/24 hour size were used to set standards for the new IMH–A–Extended–B class.

For each of the three analyzed continuous type ice maker equipment classes, DOE established a series of incremental efficiency levels, for which it has developed incremental cost data and quantified the cost-efficiency relationship. DOE chose a set of analyzed equipment classes that would be representative of all continuous type ice-making equipment classes, and grouped non-analyzed equipment classes with analyzed equipment classes accordingly in the downstream analysis, as discussed in section V.A.1. Table IV.13 shows the selected incremental efficiency levels. The efficiency levels are defined by the percent energy use less than the baseline energy use.

TABLE IV.13—SELECTED INCREMENTAL EFFICIENCY LEVELS FOR CONTINUOUS TYPE ICE MAKER EQUIPMENT CLASSES

Equipment type *	Rated harvest rate *lb ice/24 hours*	EL 2 ** *(%)*	EL 3 *(%)*	EL 4 *(%)*	EL 5 *(%)*	EL 6 *(%)*
IMH–W–Small–C	<900	.....	.....	.....	.....	.....
IMH–W–Large–C	≥900	.....	.....	.....	.....	.....
IMH–A–Small–C	<700	10	15	20	25	30
IMH–A–Large–C	≥700	10	15	20	25	30
RCU–Small–C	<850	Not Analyzed.				
RCU–Large–C	≥850	Not Analyzed.				
SCU–W–Small–C	<900	Not Analyzed.				
SCU–W–Large–C	≥900	No existing products on the market.				
SCU–A–Small–C	<700	7	15	20	25	.....
SCU–A–Large–C	≥700	No existing products on the market.				

* See Table III.1 for a description of these abbreviations.
** EL 1 is the baseline efficiency level, while EL 2 through EL 6 represent increased efficiency levels.

DOE selected the efficiency levels for the continuous type ice makers based on the levels proposed in the preliminary analysis.

c. IMH–A–Large–B Treatment

The current DOE energy conservation standard for large air-cooled IMH cube type ice makers is represented by an equation for which maximum allowable energy usage decreases linearly as harvest rate increases from 450 to 2,500 lb ice/24 hours. Extending the current IMH–A–Large–B equation to the 4,000 lb ice/24 hours range would result in efficiency levels in the newly covered range (between 2,500 lb/day and 4,000 lb/day) that may not be technically feasible. For example, at 4,000 lb ice/24 hours, the specified baseline energy use would be 2.49 kWh/100 lb, a value far below the energy consumption of existing IMH–A–Large–B ice makers (*e.g.,* it is 39 percent lower than the lowest rating for IMH–A–Large–B equipment of which DOE is aware, 4.1 kWh/100 lb). In the preliminary analysis, DOE proposed establishing baseline and incremental efficiency levels for this equipment class that maintain a constant level of energy use at higher harvest capacities, with exceptions in certain harvest capacity ranges to avoid backsliding. For example, for efficiency level 2, DOE proposed that (a) between 1,600 and 2,080 lb ice/24 hours, the maximum energy use would be independent of harvest capacity, as is the case for all other high-harvest-capacity equipment classes, (b) between 2,080 lb ice/24 hours, the maximum energy usage would be calculated according to the current standard to avoid EPCA anti-backsliding provisions, and (c) between 2,500 and 4,000 lb ice/24 hours, the maximum energy use would remain constant. DOE presented this approach in the preliminary analysis and requested comment on it; DOE did not receive any comments on this approach.

Hence, DOE is proposing to use the approach it outlined in the preliminary analysis meeting for the IMH–A–Large–B equipment class (DOE, Preliminary Analysis Public Meeting Presentation, No. at p. 29). Further, DOE proposes to separate capacity ranges of this class into ranges designated IMH–A–B and IMH–A–Extended–B, the first for equipment with harvest capacity less than 1,500 lb ice/24 hours and the second with greater harvest capacity. The proposed IMH–A–B efficiency levels would be constant between 800 and 1,500 lb ice/24 hours. Each proposed IMH–A–Extended–B efficiency level would start at an energy use that is equal to that of one of IMH–A–B efficiency levels. Its energy use would remain constant at this level within its lower range of harvest capacity rates, but would follow the current DOE standard between the harvest capacity for which the constant level equals the current DOE standard and 2,500 lb ice/24 hours. Beyond 2,500 lb ice/24 hours, it would remain constant from 2,500 to 4,000 lb ice/24 hours.

d. Maximum Available Efficiency Equipment

For the NOPR analysis, DOE considered the most-efficient equipment available on the market, known as maximum available equipment. In some cases, the maximum available equipment uses technology options that DOE chose to screen out for its analysis. Hence, DOE also identified maximum available equipment without screened technologies (see the discussion of the engineering analysis in section IV.D.2.f). The technologies that are used in some maximum available equipment that were screened out include low thermal-mass evaporators and tube evaporators for batch type ice makers.

Efficiency levels for maximum available equipment in the batch type ice-making equipment classes are tabulated in Table V.16. This information is based on DOE's icemaker ratings database (also see data in chapter 3 of the NOPR TSD). The efficiency levels are represented as an energy use percentage reduction compared to the energy use of baseline-efficiency equipment, the selection of which is discussed in section IV.D.2.a.

TABLE IV.14—EFFICIENCY LEVELS FOR MAXIMUM AVAILABLE EQUIPMENT IN BATCH ICE MAKER EQUIPMENT CLASSES

Equipment class	Energy use lower than baseline
IMH–W–Small–B	24.5%.
IMH–W–Med–B	22.4%.
IMH–W–Large–B	7.5% (at 1,500 lb ice/24 hours). 8.3% (at 2,600 lb ice/24 hours).
IMH–A–Small–B	23.6%.
IMH–A–Large–B	20.7% (at 800 lb ice/24 hours). 21.3% (at 1,500 lb ice/24 hours).
RCU–Small–B	24.6%.
RCU–Large–B	40.2% (at 1,500 lb ice/24 hours). 26.7% (at 2,400 lb ice/24 hours).
SCU–W–Small–B	22.5%.
SCU–W–Large–B	27.6%.
SCU–A–Small–B	35.8%.
SCU–A–Large–B	29.6%.*

* This is the second highest rated product; the highest rated product is also a dispenser unit.

Efficiency levels for maximum available equipment in the continuous type ice-making equipment classes are tabulated in Table IV.15. This information is based on a survey of product databases and manufacturer Web sites (also see data in chapter 3 of the TSD). The efficiency levels are represented as an energy use percentage reduction compared to the energy use of baseline-efficiency equipment, the selection for which is discussed in section IV.D.2.a. DOE used the maximum available efficiency levels to calibrate its engineering analysis against current equipment.

TABLE IV.15—EFFICIENCY LEVELS FOR MAXIMUM AVAILABLE EQUIPMENT FOR CONTINUOUS TYPE ICE MAKER EQUIPMENT CLASSES

Equipment class	Energy use lower than baseline
IMH–W–Small–C	16.5%.
IMH–W–Large–C	12.2% (at 1,000 lb ice/24 hours).
	8.6% (at 1,800 lb ice/24 hours).
IMH–A–Small–C ..	25.3%.
IMH–A–Large–C	8.1% (at 820 lb ice/24 hours).
	17.0% (at 1,500 lb ice/24 hours).
RCU–Small–C	18.4%.
RCU–Large–C	18.5%.
SCU–W–Small–C	18.7%.*
SCU–W–Large–C	No equipment on the market.*
SCU–A–Small–C	24.4%.
SCU–A–Large–C	No equipment on the market.*

* DOE's inspection of currently available equipment revealed that there are no available products in the defined SCU–W–Large–C and SCU–A–Large–C equipment classes at this time.

e. Maximum Technologically Feasible Efficiency Levels

When DOE proposes to adopt (or not adopt) an amended or new energy conservation standard for a type or class of covered equipment such as automatic commercial ice makers, it determines the maximum improvement in energy efficiency that is technologically feasible for such equipment. (*See* 42 U.S.C. 6295(p)(1) and 6313(d)(4)) Accordingly, in the preliminary analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for automatic commercial ice makers in the engineering analysis using energy modeling and the design options that passed the screening analysis. As part of the NOPR analysis, DOE modified its energy use analysis. In addition, DOE considered a different range of design options. Evaluation of maximum technological feasibility was again based on energy modeling, but DOE compared energy modeling results with maximum available without screened technologies to ensure consistency of results with actual designs at that level. See chapter 5 of the NOPR TSD for the results of the analyses, and a list of technologies included in max-tech equipment.

The max-tech efficiency levels represent equipment combining all of the design options. However, they are not generally attained by existing equipment—this is largely due to the consideration of design options seldom used in commercially available equipment because they are not considered to be cost-effective by manufacturers, such as brushless DC motors and drain water heat exchangers. DOE does not screen out design options based on cost-effectiveness.

Table III.2 and Table III.3 show the max-tech levels determined in the engineering analysis for batch and continuous type automatic commercial ice makers, respectively.

TABLE IV.16—MAX-TECH LEVELS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type *	Energy use lower than baseline
IMH–W–Small–B	30%.
IMH–W–Med–B ...	22%.
IMH–W–Large–B	17% (at 1,500 lb ice/24 hours).
	16% (at 2,600 lb ice/24 hours).
IMH–A–Small–B ..	33%.
IMH–A–Large–B ..	33% (at 800 lb ice/24 hours).
	21% (at 1,500 lb ice/24 hours).
RCU–Small–B	Not analyzed.
RCU–Large–B	21% (at 1,500 lb ice/24 hours).
	21% (at 2,400 lb ice/24 hours).
SCU–W–Small–B	Not analyzed.
SCU–W–Large–B	35%.
SCU–A–Small–B	41%.
SCU–A–Large–B	36%.

* IMH is ice-making head; RCU is remote condensing unit; SCU is self-contained unit; W is water-cooled; A is air-cooled; Small refers to the lowest harvest category; Med refers to the Medium category (water-cooled IMH only); Large refers to the large size category; RCU units were modeled as one with line losses used to distinguish standards.

TABLE IV.17—MAX-TECH LEVELS FOR CONTINUOUS AUTOMATIC COMMERCIAL ICE MAKERS

Equipment type	Energy use lower than baseline
IMH–W–Small–C	Not analyzed.
IMH–W–Large–C	Not analyzed.
IMH–A–Small–C ..	25.3%.
IMH–A–Large–C	17% (at 820 lb ice/24 hours).
RCU–Small–C	Not analyzed.
RCU–Large–C	Not analyzed.
SCU–W–Small–C	Not analyzed.
SCU–W–Large–C.*	No units available.
SCU–A–Small–C	24%.
SCU–A–Large–C.*	No units available.

* DOE's investigation of equipment on the market revealed that there are no existing products in either of these two equipment classes (as defined in this NOPR).

f. Comment Discussion

Impact of the Variability of Ice Hardness Measurements on Efficiency Levels for Continuous Type Ice Maker Equipment

Manitowoc noted that there are no industry standards for the calorimetric values of different types of ice and cautioned that DOE's assumptions for these calorimetric values may invalidate its analysis of manufacturer-supplied data. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 51–52) Hoshizaki recommended that ice hardness have one standard that incorporates all continuous type ice maker data and added that DOE should readdress the baseline for continuous type ice-making equipment after taking AHRI's 2012 ice hardness verification testing into account. (Hoshizaki, No. 53 at p. 1)

Howe recommended that DOE supplement its data on continuous type ice makers by including results from tests using the current test procedure, adding that information on continuous type ice makers has changed drastically as of late. (Howe, No. 51 at p. 2)

DOE notes that some of these comments were made before AHRI had completed verification testing work that is mentioned by Hoshizaki. DOE updated its database over the course of 2012, as many of the continuous type ice maker data in AHRI's database were updated, and hardness data was provided. DOE has primarily used this data, supplemented by DOE test data (including hardness test data) to evaluate the energy consumption characteristics of continuous type ice-making equipment and to set efficiency levels.

DOE notes that, consistent with Hoshizaki's suggestion, the proposed

standards for continuous type ice makers use one metric that combines ice quality and energy usage. In addition, DOE has not proposed use of the Canadian efficiency levels for continuous type ice makers. The proposed efficiency levels for continuous type ice makers are discussed in sections IV.D.2.a and IV.D.2.b.

Correlation of Efficiency Levels With Design Options

Manitowoc expressed confusion over the relationship between the efficiency levels and the technology options that go into those efficiency levels. Therefore, Manitowoc requested that DOE provide additional information to explain which technology options were associated with each efficiency level. (Manitowoc, Public Meeting Transcript, No. 42 at p. 51)

Manitowoc pointed out that one of the SCU-air-cooled models used for the max-available efficiency level is actually a combined ice machine and hotel dispenser, and as such is not a representative example of the SCU category, which generally consists of undercounter designs. Manitowoc further stated that its larger size would allow the model to achieve higher efficiencies than would normally be possible for the majority of SCU air-cooled models. Therefore, Manitowoc commented, this model should not be used to justify the max-available efficiency attainable for this category of ice makers. (Manitowoc, No. 54 at pp. 2–3)

In response to Manitowoc's comment regarding the relationship of design options and efficiency levels, DOE provided additional information in the automatic commercial ice maker docket, as a supporting and related material document [33] (DOE, Preliminary Analysis Presentation Supplementary Engineering Data, No. 43). The data in this document reflects the preliminary engineering analysis. For the NOPR analysis, the relationship between design options and efficiency levels has changed due to changes made to the design options considered, assumptions, and analysis approach. The new information is detailed in sections IV.D.4.a (cost model adjustments) and IV.D.4.f (energy model adjustments) and in the NOPR TSD chapter 5.

DOE notes that Manitowoc is correct in its observation that one of the max-available SCU models from the preliminary analysis is not representative of the undercounter units that make up the majority of the SCU category. DOE had intended to avoid inclusion of oversize SCU models that are not suitable for undercounter design in its establishment of maximum technology for SCU equipment classes. DOE has reviewed the maximum technology designations and has removed all ice maker-dispenser combinations from consideration in its analysis.

RCU Class Efficiency Level Differential

In its preliminary engineering analysis, DOE concluded that the 0.2 kWh per 100 lb ice differential in maximum allowable energy use for large-sized batch RCU ice makers with remote compressors as compared with those with compressors in the ice-making heads is appropriate, both for batch and continuous type ice makers. (DOE, Preliminary Analysis Public Meeting Presentation, No. 29 at p. 30) DOE requested comment on this conclusion.

Manitowoc confirmed that the 0.2 kWh per 100 lb of ice difference in energy use between these two classes of RCUs seemed valid and that it was reasonable to continue using this value while developing the new standards. (Manitowoc, Public Meeting Transcript, No. 42 at p. 44 and No. 54 at p. 3) CA IOUs stated that its analysis of product data indicates that RCUs with and without dedicated remote compressors do not consume significantly different levels of energy. CA IOUs thus suggested that DOE continue to look at product performance data and customer utility in order to determine whether separate equipment classes and efficiency levels are necessary for these two types of RCU units. (CA IOUs, No. 56 at p. 2)

Consistent with the comment from Manitowoc, DOE plans to continue using this differential of 0.2 kWh per 100 lb of ice to differentiate between RCUs with and without remote compressors.

Batch Efficiency Levels for High-Capacity Ice Maker

DOE has established baseline and incremental efficiency levels for large-capacity ice makers in the newly extended capacity between 2,500 and 4,000 lb ice/24 hours.

AHRI noted that the current efficiency standard for high-capacity batch machines was established based on the performance of ice makers available in the marketplace and that extending this efficiency level to ice makers with capacities exceeding 2,500 lb ice/24 hours may not be appropriate. AHRI recommended that DOE either select and analyze products in this capacity range or refrain from regulating these products if there are not actually enough high-capacity batch machines available for DOE to analyze. (AHRI, No. 49 at pp. 3–4)

Manitowoc stated that efficiency curves are typically flat for icemakers with capacities above 2,000 to 2,500 lb ice/24 hours and noted that this phenomenon is driven mainly by trends in compressor efficiencies, which have decreasing efficiency gains above a certain size. Additionally, Manitowoc commented that it tends to use multiple evaporators for large-capacity machines, rather than making new evaporators for every size, so its overall evaporator performance also does not improve significantly over a certain size. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 48–49)

However, Manitowoc also commented that DOE did not adequately analyze the efficiency of ice machines in the 2,000 to 4,000 lb ice/24 hour capacity range. Manitowoc suggested that it is likely that, above a certain capacity, DOE will find that the relative benefit of some design options to be lower due to the relatively higher efficiency of the baseline components already in use. (Manitowoc, No. 54 at p. 3)

Howe commented that most high-capacity ice makers are inherently more efficient than their lower-capacity counterparts and thus cannot be expected to achieve the same incremental efficiency gains. Howe added that, if incremental efficiency gains do indeed vary significantly by harvest capacity, equipment class definitions may need to change. (Howe, No. 51 at pp. 2–3)

Hoshizaki recommended that DOE make equipment plots for high-capacity batch models in order to compare existing models against the proposed efficiency levels. (Hoshizaki, No. 53 at p. 2)

Hoshizaki commented that DOE needs to analyze the available data for all eligible RCU models rather than just relying on software assumptions to inform its analysis. Hoshizaki added that there is not enough data available for DOE to adequately assess high-capacity (>2,500 lb ice/24 hours) RCU energy use and recommended that manufacturers provide input to DOE regarding these high-capacity units. (Hoshizaki, No. 53 at p. 1)

In response to AHRI, DOE reiterates that there is precedence for setting standards for capacity ranges for which equipment is not being sold, including

[33] See *www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0037-0043*. After the February 2012 preliminary analysis public meeting, DOE published cost-efficiency curves showing the relationship of efficiency levels to design options for each directly analyzed equipment class.

when DOE adopted standards for air-cooled IMH cube type ice makers up to 2,500 lb ice/24 hours, even though no such equipment is manufactured with capacities above 1,650 lb ice/24 hours. DOE simply is extending the capacity range of the standard for consistency with the applicability of the test procedure. DOE notes that it has proposed efficiency levels for the larger ice makers that, to the extent possible, do not change as a function of harvest capacity. Manitowoc's comments suggest that larger-capacity ice machines would have comparable efficiency level as compared with lower-capacity machines, and Howe's comments suggest that larger-capacity ice machines are inherently more efficient. Hence, the constant energy use efficiency level would be appropriate. The commenters did not highlight any other specific factors that would suggest that the constant energy use approach is inappropriate. Examination of the limited available data showing rated energy use as a function of harvest capacity certainly supports the approach, even though there is much less data to consider that at the lower capacity levels.

In response to Manitowoc's comment regarding analysis of batch type ice makers in the 2,000 to 4,000 lb ice/24 hours harvest capacity range, DOE notes that it has conducted analysis for three of these products—given the limited number of such products available, this likely represents a greater percentage of the available products than DOE evaluated at lower-harvest-capacity rates. Because, as mentioned by Manitowoc, efficiency characteristics of the components of ice makers such as compressors and evaporators no longer improve as capacity increases, it is reasonable to expect that ice maker efficiency will also remain constant at high-harvest-capacity rates. For this reason, it is appropriate to represent performance of the full harvest capacity range with the available ice makers of the highest harvest capacities, as DOE has done.

In response to Howe's comment, DOE has not considered reductions in efficiency at constant kilowatt-hours per 100 lb ice levels across the harvest capacity range. Instead, DOE has considered reductions in energy use in terms of percentages of baseline energy use. Hence, the energy use reductions associated with the incremental efficiency levels would be significantly less for a large-harvest-capacity ice maker with an already inherently low energy use than it would for a lower-harvest-capacity ice maker. Further, if the larger-capacity ice makers are inherently more efficient, as Howe contends, DOE's approach using efficiency levels that do not vary with capacity should not be overly aggressive, *i.e.* setting efficiency levels too stringently.

With respect to Hoshizaki's recommendation regarding examination of efficiency plots, DOE has reviewed energy use data for all products for which such data is available. The maximum efficiency levels considered in the analysis are not generally attained by existing equipment—this is largely due to the consideration of design options often considered not to be cost-effective by manufacturers, such as brushless DC motors and drain water heat exchangers. However, DOE's analysis results compared well to the maximum available without screened technologies efficiency level.

In response to the second comment from Hoshizaki, DOE notes that the analysis for high-capacity units considered several pieces of information, including available performance rating data of the AHRI database and confidential interviews with manufacturers. A significant amount of the information obtained from manufacturers in confidential interviews was obtained during the NOPR phase, in part in response to preliminary analysis phase comments, such as the Hoshizaki comment, recommending some information exchange. In addition, DOE purchased and conducted reverse engineering on the largest-capacity batch and continuous type ice makers made by the manufacturers that comprise 90 percent or greater share of the ice maker market. DOE also conducted energy testing on a few of these ice makers. DOE believes that its analysis of RCU equipment is representative of the large-capacity equipment classes. Additional information on the teardown analysis is available in chapter 5 of the NOPR TSD.

Discrepancies Between Maximum Technology Levels and Most-Efficient Equipment Available in the Marketplace

NPCC, ASAP, and NEEA/NPCC commented on the max-tech efficiency levels (*i.e.,* least energy consumptive level) and that, in some cases, max-tech levels were less efficient than the most-efficient level on the marketplace (*i.e.,* ''max-available'' energy level). NPCC further commented that DOE should indicate whether this discrepancy is due to technologies that were screened out. NEEA/NPCC pointed to products in a Natural Resources Canada (NRCan) database that surpassed DOE's max-tech levels. (NPCC, Public Meeting Transcript, No. 42 at pp. 45–46; ASAP, Public Meeting Transcript, No. 42 at p. 50; NEEA/NPCC, No. 50 at pp. 2–4) NPCC also recommended that DOE investigate whether there are superior technologies on the market that were not being analyzed simply because of the way max-tech is defined. NPCC added that the process by which design options are screened out should be very deliberate. (NPCC, Public Meeting Transcript, No. 42 at pp. 53–54)

Scotsman noted that, even within a single equipment class, maximum technology levels will differ among models. For example, although DOE is considering compressor upgrade as a design option, many ice maker units are already using the most-efficient compressor suitable to their respective applications. Scotsman added that the analytical model used to calculate energy use for max-tech levels had not been validated and was thus unreliable. (Scotsman, No. 46 at p. 4)

DOE acknowledges that there are units on the market that surpass the max-tech levels it proposed for the preliminary analysis. In some cases maximum available efficiency units include technologies that DOE had decided not to consider. For example, some max-tech units utilize proprietary technologies that are not available to the majority of manufacturers and were screened out in the screening analysis. Due to these differences, DOE's max-tech efficiency levels did not always exceed the max-available levels found on the market. Because they are representative of the whole market, DOE's max-tech levels must take into account issues with proprietary technologies as well as utility issues stemming from certain technologies (such as chassis size increases or ice cube shapes).

In the NOPR phase, DOE made several changes to the preliminary analysis. These changes included:

- Adding a design option to allow for growth of the unit to increase the size of the condenser and/or evaporator;
- adjusting assumptions regarding maximum compressor EER levels based on additional research and confidential input from manufacturers;
- adjusting potable water consumption rates for batch type ice makers subject to a floor that represents the lowest potable water consumption rate that would be expected to flush out dissolved solid reliably;
- adding a design option to allow condenser growth in water-cooled condensers; and
- adding a drain water heat exchanger design option.

These changes have led to new max-tech levels. These levels are compared

to the most-efficient levels available on the market in Table IV.18. The levels are also compared with the most-efficient levels available that do not use technologies that DOE screened out in the screening analysis (called ''max available without screened technologies''). Specifically, for batch type ice makers, the differences between these two max available market levels are that the max using analyzed technologies levels do not consider (a) low-thermal-mass evaporators, and (b) tube ice evaporators. The new max-tech levels all exceed the ''max available without screened technologies'' efficiency levels. DOE also notes that this discrepancy only existed for batch units, as DOE did not screen out any continuous unit technologies in its engineering analysis.

DOE considered max-tech and max-available levels as part of its analysis. The max-tech levels for batch and continuous type ice makers are discussed in section IV.D.2.e. In addition to comparing the max-tech, ''most efficient on market'', and the ''max available without screened technologies'' efficiency levels for batch type ice makers. Table IV.18 provides brief explanations for the differences between max-available and max-tech levels. More details regarding the design options that correlate with the different efficiency levels are provided in the NOPR TSD. DOE requests comments on the max-tech levels identified in today's NOPR, the max available and max available without screened technologies levels, and the reasons cited for the max tech/max available differences.

TABLE IV.18—COMPARISON OF LEVELS FOR BATCH AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	Max-tech level	Max-available without screened technologies *(%)*	Max-available *(%)*	Reason for gap between max-available and max available without screened technologies
IMH–W–Small–B	30%	22.0	24.5	Proprietary technology.
IMH–W–Med–B	22%	15.7	22.4	Proprietary technology.
IMH–W–Large–B	16% (at 2,600 lb ice/24 hours)	8.3	22.5	Proprietary technology and utility issues.
IMH–A–Small–B	33%	23.6	23.6	No gap.
IMH–A–Large–B	33% (at 800 lb ice/24 hours) 21% (at 1,500 lb ice/24 hours)	20.7	21.3	proprietary technology.
RCU–NRC–Small–B	Not analyzed	24.6	24.6	No gap.
RCU–NRC–Large–B	21% (at 1,500 lb ice/24 hours) 21% (at 2,400 lb ice/24 hours)	15.7	40.2	Proprietary technology and utility issues.
RCU–RC–Small–B	Not directly analyzed	19.0	19.0	No gap.
RCU–RC–Large–B	Not directly analyzed	15.1	15.1	No gap.
SCU–W–Small–B	Not directly analyzed	22.2	22.5	Proprietary technology.
SCU–W–Large–B	35%	27.6	32.9	Proprietary technology.
SCU–A–Small–B	41%	27.4	35.8	Proprietary technology.
SCU–A–Large–B	36%	29.6	33.4	Proprietary technology.

Baseline Efficiency Levels for Currently Unregulated Ice Makers

For continuous and high-capacity batch type ice makers, AHRI recommended that DOE derive its baseline efficiency levels from machines that are currently on the market, for which AHRI's new directory of certified products could be a useful information source. AHRI cautioned, however, that its certification program was new and that it expected the data to change after completion of its 2012 test program. (AHRI, No. 49 at p. 3)

Manitowoc asserted that, while EPACT 2005 is the correct baseline efficiency level for batch equipment, continuous type ice machines do not have sufficient history under any alternative certification programs and therefore require careful review and analysis by DOE prior to setting efficiency levels. (Manitowoc, No. 54 at p. 3)

Hoshizaki asserted that DOE should not use Canadian levels for continuous type ice makers and instead suggested that DOE use efficiency levels developed for machines that are currently on the market. (Hoshizaki, No. 53 at p. 1)

In the preliminary analysis, DOE proposed a set of equations to represent baseline efficiency levels for the 12 continuous equipment classes. 77 FR 3404 (Jan. 24, 2012). The equations were developed based on publicly available information of continuous type ice maker energy use for products on the market. As there was no source of ice quality data for most of these products to allow calculation of the energy use consistent with the new test procedure, which calls for adjustment of the rating to account for ice hardness, DOE made these adjustments using ice hardness equal to 0.85 for nugget ice makers and 0.8 for flake ice makers. Further details of this analysis are available in the preliminary analysis TSD.

DOE revised its development of continuous type ice maker efficiency levels for the NOPR, based on data for continuous type ice machines that was available on the AHRI database Web site as of October 11, 2012. The database now contains ratings for ice quality, which DOE incorporated into its analysis. DOE's analyses consider higher max tech levels than the max available levels, as represented by the AHRI data, because the analysis considers use of design options, such as higher efficiency permanent magnet motors, which are not used in the majority of existing ice makers. DOE's continuous baseline levels for the NOPR analysis are presented in Table IV.11.

DOE has taken advantage of the new information for continuous type ice makers that has become available on the AHRI Web site to support its selection of efficiency levels for these equipment classes.

General Methodology

Howe asked that DOE further clarify the methodology it used to establish efficiency and technology levels, especially for equipment classes in which there are few models available. Howe also asked whether DOE considered the refrigerating conditions used to produce ice or the typical efficiency levels associated with the refrigeration system. (Howe, No. 51 at p. 3)

DOE does not have sufficient resources to thoroughly analyze all

equipment classes. Hence, the analyses for some classes are used to represent other classes. The analysis prioritized those classes for which shipments and the number of models available are high. The energy model used to support the analysis, which is described in the NOPR TSD, considers the refrigerating conditions used to produce ice and the capacity and power input of the equipment's refrigerant compressors when operating at these conditions.

3. Design Options

After conducting the screening analysis and removing from consideration the technologies described above, DOE included the remaining technologies as design options in the NOPR engineering analysis. These technologies are listed in Table IV.19, with indication of the equipment classes to which they apply.

Table IV.19 Design Options by Equipment Class

Ice Maker Type	Equipment Class	Compressor Upgrade	Condenser Fan Motors	Pump Motors	Auger Motors	Larger Air-Cooled Condensers	Larger Water-Cooled Condensers	Batch Fill	Larger Evaporators	Drainwater Heat Exchanger
Batch	IMH-W-B	√		√			√	√	√	√
	IMH-A-B	√	√	√		√		√	√	√
	RCU-B	√	√	√		√		√	√	√
	SCU-W-B	√		√			√	√	√	√
	SCU-A-B	√	√	√		√		√	√	√
Continuous	IMH-W-C	Not Analyzed								
	IMH-A-C	√	√		√	√			√	
	RCU-C	Not Analyzed								
	SCU-W-C	Not Analyzed								
	SCU-A-C	√	√		√	√			√	

a. Improved Condenser Performance in Batch Equipment

During the preliminary analysis, DOE considered size increase for the condenser to reduce condensing temperature and compressor power input. DOE requested comment on use of this design option and on the difficulty of implementing it in ice makers with size constraints.

AHRI commented that most condensers are already optimized and occasionally oversized; therefore, further increasing condenser area would not have any efficiency benefits and could instead necessitate increased cabinet size. (AHRI, No. 49 at p. 2)

Manitowoc commented that the outdoor condensers of RCUs can more easily accommodate size increases than the condensers incorporated into IMH equipment. However, Manitowoc also noted that increasing the size of the condenser coil in order to improve efficiency would necessitate an increased level of refrigerant. Manitowoc stated that this could require the installation of a larger receiver in the ice-making head, which may be difficult due to size constraints. (Manitowoc, Public Meeting Transcript, No. 42 at p. 59)

Manitowoc added that increasing the size of the condenser while maintaining a constant evaporator size can also interfere with the ability of the ice machine to properly make ice over the full range of ambient conditions. Manitowoc stated that DOE's analysis is only concerned with performance at 90 °F air/70 °F water testing conditions, but that real ice makers have to work in air temperatures ranging from 50 to 110 °F and water temperatures from 40 to 90 °F. As air temperature drops, Manitowoc stated, unless special refrigerant management devices are employed, a larger condenser will be forced to store more refrigerant at a lower temperature. This will prevent batch type ice machines from being able to harvest ice at low ambient temperatures, according to Manitowoc. (Manitowoc, No. 54 at p. 2) Similarly, Scotsman commented that increasing the efficiency of the freeze cycle will lengthen the harvest process and minimize overall energy savings. (Scotsman, Public Meeting Transcript, No. 42 at pp. 59–60) Scotsman asserted that DOE's analysis of condenser surface area must include this impact on the batch harvest cycle. (Scotsman, No. 46 at p. 3)

Hoshizaki commented that manufacturers would need more time to evaluate the implications of using larger water-cooled condensers on a closed-loop system. Although larger condensers would increase the efficiency of heat transfer, Hoshizaki opined that this benefit must be compared with the increased final cost to the consumer as well as the potential need to increase cabinet size. (Hoshizaki, No. 53 at p. 2)

In response to Manitowoc's written comments, DOE has considered data obtained through testing of water-cooled units, as well as data provided by manufacturers on expected efficiency increases versus condenser growths.

DOE notes that the key concerns expressed in Hoshizaki's comment relate to the potential need to increase cabinet size and the concern about whether the larger condenser (and perhaps cabinet) is cost-justified. As discussed in section IV.C.d, DOE has considered a modest size increase for the ice-making head for some ice maker equipment classes. Answering the question of whether condenser size increase within these modest allowances for cabinet size increase is cost-effective is a key goal of the DOE analyses—the potential that the approach is not cost-effective is not a relevant argument for screening out this technology.

In response to Scotsman and Manitowoc's written comments, DOE conducted testing to assess the correlation of batch type ice maker efficiency level with condensing temperature and has used this information, which accounts for the increase in harvest energy use associated with lower condensing temperature, to adjust its analyses. DOE tested a water-cooled batch unit using different water-flow settings; the results are shown in Table IV.20. DOE notes that these test results indicate that there are energy benefits from increasing condenser area, even though harvest cycle energy use increases. The results show that the increase in harvest cycle energy use represents a loss of 15 percent of the gain that would have been achieved if harvest energy use had not increased. DOE used these test results to adjust the modeled harvest energy when condenser improvement such as size increase was applied as a design option. These analyses are described in chapter 5 of the NOPR TSD.

TABLE IV.20—CONDENSER WATER TEST RESULTS

Test attribute	Test setting 1 (factory-setting)	Test setting 2	Test setting 3
Condensing Temperature °F	97	107	111
Ice Harvest Rate lb ice/24 hours	375	361	355
Energy Consumption kWh/100 lb ice	4.67	5.13	5.28
Average Harvest Time (s)	104	81	73
Average Harvest Energy Wh	21.2	17.9	17.0
Average Harvest Energy per Ice kWh/100 lb	0.53	0.44	0.42
Percent of Savings Lost due to Harvest Energy Increase	15%	12%	N/A

DOE inspected baseline and high-efficiency units, including condenser sizes typical of each. For equipment classes for which DOE inspected high-efficiency units, DOE considered maximum condenser sizes consistent with the inspected units. For equipment classes where DOE did not have such information, DOE considered maximum condenser sizes consistent with the range of chassis sizes of commercially available equipment of the given class and harvest capacity. DOE notes that none of the evaluated IMH or SCU equipment has receivers, thus indicating that they would not be needed for the range of condenser sizes DOE considered in its analysis for these equipment classes. DOE also considered whether a larger remote condenser would require installation of a larger receiver, and talked with receiver manufacturers about receiver sizing. DOE did not seek to increase receiver sizes for any of the models analyzed.

In response to comments by AHRI and Manitowoc, DOE studied the condensing temperatures of tested units to set limits for available efficiency improvement. DOE in its analyses considered only condenser changes that resulted in condensing temperatures within the range of those observed in the tested ice makers for comparable equipment classes (for instance DOE used different minimum condensing temperatures for air-cooled and water-cooled equipment). These analyses are described in chapter 5 of the NOPR TSD.

b. Harvest Capacity Oversizing

NPCC noted that many ice makers may be oversized for their particular applications, suggesting that there would be little compromise of customer utility if the capacity available for a given ice maker chassis size decreased as a result of design changes that increased their efficiency. (NPCC, Public Meeting Transcript, No. 42 at pp. 60–61)

Manitowoc countered that its customers are very aware of how much ice they need and that they consequently size machines for peak demand days, rather than average use. Manitowoc added that it is very important that customers not shut down on days with high demand, such as the 4th of July. (Manitowoc, Public Meeting Transcript, No. 42 at p. 63)

DOE did not investigate potential down-sizing of equipment, instead relying on information regarding commercially available units as the basis for consideration of what sizes are acceptable for given capacity levels.

c. Open-Loop Condensing Water Designs

Open-loop cooling systems use condenser cooling water only once before disposing of it, whereas closed-loop (single-pass) systems repeatedly recirculate cooling water. In closed loops, the water is cooled in a cooling tower and recirculated to accept heat from the automatic commercial ice maker condenser again. Alternatively, the water passes through another heat exchanger where the heat is removed and used in another piece of equipment, such as a space or water heater, before cycling back to the ice maker condenser. Although some condenser water may still be lost to evaporation in cooling towers, closed-loop systems still have negligible condenser water disposal or consumption compared to open-loop systems.

The Alliance expressed strong opposition to open-loop condenser water cooling for automatic commercial ice makers, arguing that such technology is obsolete and excessively wastes water and energy. The Alliance noted that more energy-efficient technologies such as air cooling, remote condensing, and closed-loop water-cooling systems have made single-pass water cooling unnecessary. Therefore, the Alliance urged DOE to disallow all ice makers that can be installed and operated with a single-pass cooling system. (Alliance, No. 45 at pp. 3–4)

DOE recognizes that open-loop water-cooling systems use significantly more water than other condenser cooling technologies. However, DOE determined after the Framework public meeting that its rulemaking authority extends only to the manufacturing of equipment and not to the installation or usage of equipment. Thus, DOE has no authority to mandate that dual-use water-cooled machines (those that can be used in either closed-loop or open-loop configurations) be used with closed-loop systems. Furthermore, DOE is not aware of any potential design requirements it could impose that would effectively prohibit open-loop cooling systems for water-cooled ice makers. Even if a design requirement could be effective in this regard, DOE can only adopt either a prescriptive design requirement or a performance standard for commercial equipment. (42 U.S.C. 6311(18)) The focus of this rulemaking is an equipment performance standard. Due to the nature

of this rulemaking, DOE is not considering any prescriptive design requirements, and open-loop cooling systems therefore remain a viable option for manufacturers of water-cooled ice makers who want to reduce their water consumption.

d. Condenser Water Flow

EPACT 2005 prescribes maximum condenser water use levels for water-cooled cube type automatic commercial ice makers. (42 U.S.C. 6313(d)) [34] For units not currently covered by the standard (continuous machines of all harvest rates and batch machines with harvest rates exceeding 2,500 lb ice/24 hours), there currently are no limits on condenser water use.

In this rulemaking, DOE considered using higher condenser water flow rates as a design option for water-cooled ice makers.

In chapter 2 of the preliminary TSD, DOE indicated that the ice maker standards primarily focus on energy use, and that DOE is not bound by EPCA to comprehensively evaluate and propose reductions in the maximum condenser water consumption levels, and likewise has the option to allow increases in condenser water use, if this is a cost-effective way to improve energy efficiency.

DOE did not analyze potential changes in condenser water use standards during the preliminary analysis. However, it did propose an approach for balancing energy use and condenser water use in the engineering analysis in a way that maintains the rulemaking's focus on energy use reduction while appropriately considering the cost implications of changing condenser water use. DOE proposed using appropriate representative values for water and energy costs, product lifetime, and discount rates to calculate a representative LCC for baseline and modified design configurations as part of the engineering analysis. In this way, the engineering analysis would develop a relationship between energy efficiency and manufacturing cost as is customary in engineering analyses (*i.e.,* the cost-efficiency curves), but the ordering of different design configurations in this curve would be based on minimizing the representative LCC calculated for the candidate design configurations at each successive efficiency level. Using this proposed analytical approach, an energy-saving increase in condenser water use would be expected to be cost-effective when the remaining design options, which do not change water use, have greater LCC increases than the option of increasing condenser water use. This approach would avoid the complexity of developing several cost curves representing multiple condenser water use levels and determining in the downstream analyses the efficiency levels at which increasing condenser water use would be appropriate. During the preliminary analysis, DOE requested comment on this approach for addressing condenser water use.

AHRI commented that water-cooled ice makers are already efficient products and that reducing condenser water consumption could significantly increase their energy use. AHRI and Scotsman both cautioned that DOE must consider the impact that lower condensing temperatures could have on the harvest rate of batch type ice makers and ensure that product utility is not diminished by implementing new condenser water use standards. (AHRI, No. 49 at p. 4; Scotsman, Public Meeting Transcript, No. 42 at p. 70)

In the public meeting discussions, Manitowoc suggested that DOE consider decreasing the allowable condenser water use, which could be a more economical approach if water costs increase. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 70–72) However, Manitowoc also noted in its written comments that condenser water use is carefully managed to ensure that ice makers can harvest ice under worst-case conditions and maintain water velocities within specified limits in order to avoid erosion. Manitowoc expressed doubt about the ability of DOE's energy model to accurately predict the effects of these variables, and for this reason, Manitowoc strongly discouraged introducing condenser water use standards. (Manitowoc, No. 54 at pp. 3–4)

DOE stated that EPCA's anti-backsliding provision in section 325(o)(1), which lists specific products for which DOE is forbidden from prescribing amended standards that increase the maximum allowable water use, does not include ice makers. However, Earthjustice asserted that DOE lacks the authority to relax condenser water limits for water-cooled ice makers. Earthjustice argued that the failure of section 325(o)(1) to specifically call out ice maker condenser water use as a metric that is subject to the statute's prohibition against the relaxation of a standard is not determinative. On the contrary, Earthjustice maintained that the plain language of EPCA shows that Congress intended to apply the anti-backsliding provision to ice makers. Earthjustice commented that section 342(d)(4) requires DOE to adopt standards for ice-makers ''at the maximum level that is technically feasible and economically justified, as provided in [section 325(o) and (p)].'' (42 U.S.C. 6313(d)(4)) Earthjustice stated that, by referencing all of section 325(o), the statute pulls in each of the distinct provisions of that subsection, including, among other things, the anti-backsliding provision, the statutory factors governing economic justification, and the prohibition on adopting a standard that eliminates certain performance characteristics. By applying all of section 325(o) to ice-makers, section 342(d)(4) had already made the anti-backsliding provision applicable to condenser water use, according to Earthjustice. Finally, Earthjustice stated that even if DOE concludes that the plain language of EPCA is not clear on this point, the only reasonable interpretation is that Congress did not intend to grant DOE the authority to relax the condenser water use standards for ice makers. Earthjustice added that the anti-backsliding provision is one of EPCA's most powerful tools to improve the energy and water efficiency of appliances and commercial equipment, and Congress would presumably speak clearly if it intended to withhold its application to a specific product. (Earthjustice, No. 47 at pp. 4–5)

Scotsman commented that balancing condenser water use with energy use was a reasonable analytical approach. (Scotsman, No. 46 at p. 3) Scotsman added that including condenser water usage in the overall energy use of a machine would also impact continuous type ice machines by affecting ice hardness. (Scotsman, Public Meeting Transcript, No. 42 at p. 70)

The Alliance argued that water use and energy use cannot be compared on a simple price basis because of key differences between the two resources. While energy comes from multiple sources and is a commodity whose prices fluctuate based on supply and demand, fresh water is in limited supply, the Alliance stated. Hence, water prices are heavily regulated and based on the cost of treatment and delivery, which is less directly affected by supply and demand, according to the Alliance. Therefore, the Alliance recommended that DOE consider the marginal costs of alternative water sources, such as desalination, in its analyses to properly account for all

[34] The table in 42 U.S.C. 6313(d)(1) states maximum energy and condenser water usage limits for cube-type ice machines producing between 50 and 2,500 lb of ice per 24 hour period (lb ice/24 hours). A footnote to the table states explicitly the water limits are for water used in the condenser and not potable water used to make ice.

water costs as applied to water-cooled condensers. (Alliance, No. 45 at p. 4)

In response to Earthjustice's comment, DOE maintains its position from the preliminary analysis that the anti-backsliding provision of EPCA (42 U.S.C. 6313(d)(4)) does not apply to condenser water use in batch-type automatic commercial ice makers. While EPCA's anti-backsliding provision (42 U.S.C. 6295(o)) applies to consumer products, 42 U.S.C. 6313(d)(4) makes the backsliding provision applicable to automatic commercial ice makers. However, 42 U.S.C. Sec. 6295(o)(1) anti-backsliding provisions apply to water in only a limited set of residential appliances and fixtures. Under 42 U.S.C. Sec. 6295(o)(1), ''the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.'' This provision links automatic commercial ice makers to the energy efficiency anti-backsliding provision as a covered product, and does not include automatic commercial ice makers among the products covered by the water efficiency anti-backsliding provision. Thus, this section of EPCA prohibits DOE from amending any standard in such a way as to decrease minimum energy efficiency for any covered automatic commercial ice maker equipment class. It does not, however, prohibit an increase in water use in any products other than those enumerated in the statute, and nothing in 6313(d)(4) expands the specific list of equipment or appliances to which the water anti-backsliding applies. Therefore, an increase in condenser water use would not be considered backsliding under the statute. Nevertheless, the proposals do not include increases in condenser water use.

Noting that condenser water standards are already in place for batch type ice makers, DOE has decided to consider an increase in condenser water use as a design option to improve energy efficiency for all water-cooled ice makers. Acknowledging the concerns of stakeholders such as AHRI, Manitowoc, and Scotsman, DOE recognizes that such an approach must consider the cost-effectiveness of this design option based on the end-user's water cost. DOE does not believe that the contemplated changes would diminish product utility, because an increase in the maximum allowed condenser water use would increase the flexibility of manufacturers to meet the condenser water use standard. Manufacturers would obviously not be required to increase condenser water use, especially if such a design decision would negatively impact the energy use or harvest rate of their ice makers.

In response to Manitowoc's observation that water velocities must be maintained within specified limits in order to avoid erosion, DOE conducted an analysis to determine whether current levels of water use in water-cooled condensers are close to exceeding these limits. DOE has learned from manufacturers of water-cooled condensers that water flow rates generally should not exceed 3.5 gallons per minute per nominal ton of condenser cooling capacity (gpm per ton).[35] DOE's analysis of test data for batch machines shows that the maximum condenser water flow rate occurs shortly after harvest, and that there is some room for increase of condenser water flow rate with the 3.5 gpm per ton limit. DOE considered some increase of condenser water flow for batch type units that did not already operate at this limit at the start of the freeze cycle. Unlike batch type ice makers, whose condenser loads spike shortly after the harvest cycle, continuous type ice makers typically operate in steady-state. DOE's testing shows that flow rates in continuous type ice makers are therefore far from the maximum levels recommended to prevent erosion. However, DOE notes that it did not perform direct analysis on any water-cooled continuous equipment classes.

As the manufacturers and AHRI point out, DOE must be careful in the analysis of condenser water to ensure that the complex relationship between condenser water and machine energy usage are modeled correctly. However, balancing energy use and condenser water use following the approach outlined above greatly simplifies an otherwise highly complex, three-dimensional analysis of design options, condenser water use levels, and efficiency. This analysis approach helped DOE determine whether increasing condenser water limits could cost-effectively save electricity.

DOE tested three water-cooled ice makers with varying condensing water flow to evaluate the potential for energy savings and the cost-effectiveness of using this approach. The results of this evaluation for a batch type ice maker are shown in Table IV.21. The analysis assumed that in the field half of the ice makers would be used in open systems and half in closed-loop systems, which significantly reduce water flow, as documented in chapter 5 of the NOPR TSD.

TABLE IV.21—TEST DATA FOR A WATER-COOLED BATCH UNIT

Condensing Temperature, °*F*	97	107	111
Harvest Capacity, *lb/24 hr*	375	361	355
Energy Consumption, *kWh/100 lb*	4.67	5.13	5.28
LCC Operating Cost, *$/100 lb*	$1.75	$1.38	$1.32
Condenser Water Use, *gal/100 lb*	165.4	106.5	94.1

The analysis shows that increasing condenser water flow is not a cost-effective way to reduce energy use. This was demonstrated also for the two continuous type ice makers that were tested. As a result, DOE did not comprehensively evaluate this approach for all water-cooled equipment classes in its engineering analysis. Additional details are available in chapter 5 of the NOPR TSD.

e. Compressors

Scotsman commented that the high-EER compressors in DOE's analysis may not be feasible for ice makers, particularly batch type ice makers, in which liquid refrigerant can often enter the compressor during the harvest process. Scotsman noted that the design changes used by compressor manufacturers to improve EER can reduce reliability, for instance placing the compressor suction line closer to the suction intake within the shell, which can cause liquid refrigerant to impinge on the suction valve during harvest and rapidly lead to compressor failure.

[35] Personal communication with Piyush Desai at Packless Industries on May 16, 2012.

(Scotsman, No. 46 at p. 5) Manitowoc echoed Scotsman's second point, indicating that a direct suction compressor would allow liquid to enter the compressor cylinder and damage the valve system. (Manitowoc, No. 54 at p. 2)

In response to these comments, DOE consulted with manufacturers regarding which compressors are appropriate for ice makers. DOE removed from its analysis those compressors that manufacturers have indicated are unsuitable for use in ice makers. As part of the NOPR analyses, DOE also considered additional compressors of compressor lines that manufacturers indicated are acceptable. The impact of these changes in the analysis on the predicted potential efficiency improvement associated with use of higher efficiency compressors varied by equipment class. Additional details are available in chapter 5 of the NOPR TSD.

f. Limitations on Available Design Options

Manitowoc commented that the small size of the ice maker industry makes it difficult for ice maker manufacturers to implement new technologies or influence the component (*e.g.,* compressor or motor) suppliers that they depend on for efficiency gains. Manitowoc noted that, compared to other appliance industries, ice maker sales volumes do not drive component suppliers to make design changes, so ice maker manufacturers are limited to those changes that suppliers will implement for larger customers. Furthermore, Manitowoc noted that, rather than being independent appliances, ice makers are typically part of a larger equipment chain for delivering food service products, which places them under physical constraints and causes their technology changes to have broader impacts on the entire food delivery industry. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 14–15)

For the NOPR analyses, DOE has used design options that are commercially available. Many of these technologies are found in ice makers that were inspected, and a few are available from component manufacturers. DOE has taken care to ensure that those design options identified do apply to these products.

- For example, DOE has removed from its analysis any compressors that may potentially interfere with ice maker operation (based on their design).
- DOE has also included an option to increase chassis sizes (in order to grow internal components such as heat exchangers), but limited chassis growth design options to only cover the modest levels suggested by the available equipment offerings

Further information on DOE's analyses is contained in sections IV.D.4.e and IV.D.4.f.

4. Development of the Cost-Efficiency Relationship

In this rulemaking, DOE has adopted a combined efficiency level/design option/reverse engineering approach to developing cost-efficiency curves. To support this effort, DOE developed manufacturing cost models based heavily on reverse engineering of products to develop a baseline MPC. DOE estimated the energy use of different design configurations using an energy model whose input data was based on reverse engineering, automatic commercial ice maker performance ratings, and test data. DOE combined the manufacturing cost and energy modeling to develop cost-efficiency curves for automatic commercial ice maker equipment based on baseline-efficiency equipment selected to represent their equipment classes. Next, DOE derived manufacturer markups using publicly available automatic commercial ice maker industry financial data, in conjunction with manufacturer feedback. The markups were used to convert the MPC-based cost-efficiency curves into MSP-based curves. Details of these analyses developed for the preliminary analysis were presented in the preliminary analysis TSD and in a supplementary data publication posted on the rulemaking Web site.

Stakeholder comments regarding DOE's preliminary engineering analyses addressed the following broad areas:

1. Estimated costs in many cases were lower than manufacturers' actual costs.
2. Estimated efficiency benefits of many modeled design options were greater than the actual benefits, according to manufacturers' experience with equipment development.
3. DOE should validate its energy use model based on comparison with actual equipment test data.
4. DOE should validate its cost-efficiency analysis by investigating the relationship of efficiency with retail prices for ice makers.
5. The incremental costs in the engineering analysis should take into consideration the design, development, and testing costs associated with new designs.

These topics are addressed in greater detail in the sections below.

a. Manufacturing Cost

Manitowoc requested that DOE provide more information on the inputs and methodology behind calculating the MPCs for each efficiency level. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 76–77) Manitowoc, Scotsman, and AHRI all asserted that it is important for DOE to accurately assess the potential incremental costs associated with each efficiency level, since they will drive the decisions in this rulemaking. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 170–171 and No. 54 at p. 1; Scotsman, Public Meeting Transcript, No. 42 at p. 173; AHRI, No. 49 at p. 6)

Regarding the accuracy of DOE's cost model, Manitowoc commented that some of the incremental costs between efficiency levels were incorrect. Manitowoc added that, while it could not provide its bill of materials, it would be willing to give DOE guidance regarding the actual costs of implementing technology design changes at realistic volumes. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 80–81) Scotsman agreed with Manitowoc that the table of incremental costs was optimistic at best and added that changing one component in an ice maker will often require also changing other components, further affecting incremental costs. (Scotsman, Public Meeting Transcript, No. 42 at p. 85)

Specifically, Manitowoc, Scotsman, and AHRI each stated the belief that DOE has underestimated the incremental costs of its proposed design options. (Manitowoc, No. 54 at p. 1; Scotsman, No. 46 at p. 5; AHRI, No. 49 at p. 6) For example, DOE estimated that the incremental cost of using an electronically commutated motor (ECM) in place of a shaded pole motor would be $13, whereas Scotsman's supplier quoted an incremental cost of $35 for this same design option. Scotsman added that, because the ice maker industry is relatively low-volume, ice maker manufacturers face large cost premiums for component technologies. (Scotsman, No. 46 at p. 5) AHRI noted that DOE assumed that an 8 percent increase in compressor efficiency would cost only $9. However, AHRI asserted that most compressors currently used in ice makers are already mechanically optimized and could therefore achieve greater efficiency only by switching to permanent magnet motors, which would cost seven times more than DOE's incremental cost estimate. AHRI cautioned that DOE should not assume that information it derived for other rulemakings is automatically applicable to ice makers. AHRI also opined that DOE drastically underestimated the cost of increasing condenser surface area. (AHRI, No. 49 at p. 2) Finally, Manitowoc commented that DOE's cost

estimates for ECM versions of the fan motors and pumps were unrealistically low. (Manitowoc, No. 54 at p. 2)

In response to Manitowoc's first comment, DOE has provided additional information correlating efficiency levels and design options in this NOPR and its accompanying TSD. The TSD details the design option changes and associated costs, calculated for each efficiency level for the equipment analyzed.

In response to the comments by Manitowoc, Scotsman, and AHRI, DOE had received very limited feedback from manufacturers regarding cost estimates to support its preliminary engineering analysis. During the NOPR phase of this rulemaking, DOE emphasized the need to obtain relevant information from stakeholders by extending the comment period by 40 days and welcoming comment on specific details presented in the TSD regarding technology options and costs. Moreover, DOE's contractor again worked directly with manufacturers under non-disclosure agreements in order to obtain additional cost information.

DOE has significantly revised its component cost estimates for the engineering analysis for the NOPR phase based on the additional information obtained, both in discussions with manufacturers and in stakeholder comments. DOE used the detailed feedback that it solicited from manufacturers to update its cost estimates for all ice maker components, significantly increasing its estimates of nearly all of these costs. Additional details on the adjusted component costs are available in chapter 5 of the NOPR TSD.

b. Energy Consumption Model

The energy consumption model calculates the energy consumption of automatic commercial ice makers in kilowatt-hours per 100 lb of ice based on detailed description of equipment design. The DOE analysis for a given equipment class and capacity applied the model for a variety of design configurations representing different performance levels. The analysis starts with a baseline design, subsequently assessing the differing energy consumption for incrementally more-efficient equipment designs that utilize increasing numbers of design options. The results of the energy consumption model are paired with the cost model results to produce the points on the cost-efficiency curves, which correspond to specific equipment configurations. After the publication of the preliminary analysis, DOE received numerous stakeholder comments regarding the methodology and results of the energy consumption model.

Manitowoc and Howe both commented that DOE's models significantly overstated the efficiency gains associated with many of the design options. (Howe, No. 51 at p. 3; Manitowoc, No. 54 at p. 2) As an example, Howe pointed out that using a more efficient fan may not have a significant impact on the overall efficiency of the ice maker, since the fan represents a small fraction of its overall energy use. (Howe, No. 51 at p. 3) Manitowoc added that its own tests on actual ice machines under controlled conditions resulted in lower performance gains than those predicted by the DOE models. (Manitowoc, No. 54 at p. 2)

Manitowoc commented that it would like to have more information on the models used in DOE's engineering analysis. In particular, Manitowoc stated that it would like to learn more about the FREEZE model, since it is difficult to model the process of freezing water into ice and even more difficult to model ice harvesting. Manitowoc noted that this model will drive DOE's estimation of energy efficiency and that it is important for manufacturers to understand the impacts of the model before new standards take effect, especially if new efficiency levels take manufacturers to technology levels far beyond their level of experience. (Manitowoc, Public Meeting Transcript, No. 42 at pp. 171–173)

Manitowoc also commented that the FREEZE model is limited by its inability to model the harvest portion of the batch cycle. Manitowoc stated that, although the harvest portion is shorter in duration than the freeze portion, it represents a significant fraction of energy consumption due to the higher energy input to the compressor and the additional energy required to cool the evaporator after each harvest. Manitowoc added that many changes that improve the freeze operation efficiency, such as increasing condenser area, also reduce harvest operation efficiency. Manitowoc expounded on this example by noting that the increased condenser surface area reduces the design temperature of the refrigerant, which results in lower energy available during the harvest cycle, which in turn results in slower harvest times and an overall increase in energy during the harvest cycle. Manitowoc commented that DOE's FREEZE model is unable to account for such behavior. (Manitowoc, No. 54 at pp. 1–2)

Scotsman and Hoshizaki both commented that the energy model will be incomplete until it has been validated with real test results of different technology design options. (Scotsman, Public Meeting Transcript, No. 42 at pp. 173–174) Hoshizaki asserted that DOE should not use the FREEZE model in the analyses until it has been validated. (Hoshizaki, No. 53 at p. 1)

Scotsman inquired whether DOE intends to validate its cost-efficiency model by implementing these design changes on actual machines and evaluating their subsequent energy performance. (Scotsman, Public Meeting Transcript, No. 42 at pp. 85–86)

In response to comments by Manitowoc, Howe, and Scotsman, DOE has made changes to the energy modeling based on feedback received from the manufacturers under non-disclosure agreements. To address concerns by Manitowoc that the FREEZE model did not adequately model the effects of increased condenser size on the harvesting energy, DOE also performed testing of a water-cooled condenser batch unit, and used the test data to develop a relationship between condensing temperatures and harvest energy. DOE did note that lower condensing temperatures did result in lower overall energy consumption, but higher harvest energy consumption.

TABLE IV.22—TEST DATA FOR A WATER-COOLED BATCH UNIT

Test level	Units	1	2	3
Condenser Temperature	°F	97.36	107.47	111.36
Ice Harvest	lb/24 hr	375	361	355
Overall Energy Consumption	kWh/100 lb	4.67	5.13	5.28
Average Harvest Energy Consumption	Wh	21.21	17.86	17.03
LCC Operating Cost	$/100 lb	$1.75	$1.38	$1.32
Condenser Water Use	gal/100 lb	165.4	106.5	94.1

Further information on DOE's engineering analysis and energy model adjustments is contained in sections IV.D.4.e and IV.D.4.f.

c. Retail Cost Review

AHRI and Hoshizaki both questioned the accuracy of DOE's incremental cost-efficiency analysis. AHRI and Hoshizaki recommended that DOE validate it by comparing its results with actual retail prices. (AHRI, Public Meeting Transcript, No. 42 at pp. 78–80, 82–83, 174–175, and No. 49 at p. 6; Hoshizaki, Public Meeting Transcript, No. 42 at p. 84 and No. 53 at p. 1).

In response to AHRI's and Hoshizaki's request for cost validation, DOE prepared a price analysis for automatic commercial ice makers to evaluate the correlation of price with higher ice maker efficiency. DOE collected list price information from publicly available automatic commercial ice maker manufacturer price sheets for 470 ice makers. DOE collected other information relevant to the analysis appropriate sources, including equipment dimensions, harvest capacity, ENERGY STAR qualification, and energy use. For equipment classes for which there were data available for more than 20 ice makers, price and ice harvest rate were shown to have a strong linear correlation, with R-squared values ranging from 0.63 to 0.84. This result indicates that customers pay more for higher-capacity ice makers.

While an initial evaluation of price trends with efficiency suggested that prices are higher for higher efficiency ice makers, subsequent analysis suggests that this trend can be attributed to the trend for reduction in energy use for higher harvest capacity and the aforementioned relationship between price and harvest capacity. For the equipment classes for which there were sufficient ice makers to analyze, DOE determined the best-fit linear relationship predicting price as a function of ice harvest rate. DOE then evaluated the relationship between each ice maker's price differential (*i.e.,* the difference between its price and the best-fit linear function), expressed as a percentage of the predicted price, with the ice maker's energy consumption rate (in kWh/100 lb ice), developing best-fit linear relationships for these trends. DOE noted that the linear relationships showed either no growth or very small growth in price as energy consumption increased. These results indicate that there is no correlation between higher efficiency and higher retail prices for ice machines. However, DOE did not conclude, based on this analysis, that there would be no costs associated with improving equipment efficiency—rather, it concluded that retail prices are not a reliable indicator of these costs. Additional information on this analysis can be found in chapter 3 of the NOPR TSD.

d. Design, Development, and Testing Costs

Hoshizaki commented that DOE's incremental cost-efficiency analysis must include all aspects of design changes, including the additional design time, testing, and increased labor, when calculating incremental costs. Hoshizaki added that manufacturers could help DOE by reviewing the actual costs associated with redesigning their machines to meet the 2010 DOE energy standards as well as ENERGY STAR standards. Hoshizaki expressed its willingness to collaborate with DOE and AHRI. (Hoshizaki, No. 53 at p. 3)

DOE incorporates the cost of additional design time, testing, labor, and tooling into its manufacturer impacts analysis, as described in section IV.J. During the NOPR analyses, DOE and its contractors contacted manufacturers and obtained related costs under non-disclosure agreements. More information on these analyses is available in section IV.J.

e. Empirical-Based Analysis

In response to comments from Scotsman and Hoshizaki about the validity of the energy model, DOE investigated using an empirical efficiency level approach for the engineering analysis rather than the approach combining energy modeling and manufacturing cost modeling that was used in the preliminary analysis. DOE performed this analysis for eight batch equipment classes and three continuous equipment classes. The alternative approach was to develop the cost-efficiency curves based on rated or tested automatic commercial ice makers energy use levels and costs estimated using the manufacturing cost model with updates from manufacturer discussions, as described in section IV.D.4.a. To support the empirical analysis, DOE purchased and tested 20 additional ice makers, giving DOE a total of 39 ice makers for evaluation.

Table IV.23 shows the resulting costs for equipment classes that were analyzed using the empirical approach and the energy modeling approach. The incremental cost of reaching a 15 percent below baseline efficiency level is listed below. In 7 out of 9 equipment classes, the energy modeling approach result was far more conservative (*i.e.,* resulted in higher incremental cost estimates) than the empirical approach result; DOE estimated a negative cost-efficiency relationship in five of these cases for the empirical approach.

TABLE IV.23—COMPARISON OF NOPR AND EMPIRICAL ANALYSIS APPROACHES AT THE 15% EFFICIENCY LEVEL

	15% EL Incremental cost from empirical approach	15% E ncremental cost from NOPR (energy modeling)
IMH–A–Small–B	$4.88	$45.00
IMH–A–Large–B	(32.32)	39.00
IMH–W–Small–B	(102.62)	37.00
IMH–W–Medium–B	(543.66)	53.00
RCU–NRC–Small–B	4.70	* NA
RCU–NRC–Large–B	166.03	198.00
SCU–A–Large–B	(106.45)	40.00
SCU–A–Small–B	47.41	32.00
IMH–A–C	74.60	46.00
RCU–NRC–C	(354.91)	* NA
SCU–A–C	(244.80)	28.00

* The NOPR analysis did not directly analyze this equipment class.

DOE compared the results of the empirical analysis and the results of the energy modeling, and concluded that the energy modeling results provided a better and more consistent forecast in the ability of manufacturers to reach certain efficiency levels. While the analyses rigorously account for the cost differences in key components that affect energy use, the costs to achieve higher efficiency levels range from higher than the NOPR estimates to very low to negative. DOE is concerned that, while the calculated cost differences may accurately reflect actual cost differences between the chosen pairs of models, the results may be very dependent on the details associated with the specific model selections, and may vary depending on the units that are selected. DOE's empirical analysis does indicate that the energy modeling approach does not underestimate the cost-efficiency steps required to reach higher efficiencies. DOE believes that careful calibration of the energy model combined with reassessment of the cost model can result in accurate cost-efficiency curves.

Thus, DOE decided to proceed with the energy modeling approach as the main basis for the engineering analysis. DOE has addressed many of the stakeholder comments as it updated the energy modeling analysis. The details of the energy modeling approach are described in the next section, section IV.D.4.f.

Additional details and results of the empirical analysis are available in chapter 5 of the NOPR TSD. DOE believes that the results of the empirical analyses support the results of DOE's design option analysis.

f. Revision of Preliminary Engineering Analysis

After investigation of and rejection of an empirical efficiency level analysis approach, DOE instead developed the NOPR engineering analysis by updating the preliminary engineering analysis. This included making adjustments to the manufacturing cost model as described in section IV.D.4.a. It also included adjustments to energy modeling.

The design options considered in the analysis changed, as the discussion of the updated screening analysis details in section IV.C.

DOE also made several changes to the FREEZE energy model used to estimate energy use of different ice maker design configurations. To address the concerns raised by Manitowoc and Howe, DOE adjusted its energy models based on input received in manufacturers' public and confidential comments and discussions DOE's contractor conducted under non-disclosure agreements. These changes included:

- Adjustment of the compressor coefficients for batch type ice makers;
- using data from tests of ice makers to model the increase of harvest energy as condensing temperature decreases for batch type ice makers;
- developing an approach based on test data to determine the condensing temperature reductions associated with use of larger water-cooled condensers;
- limiting adjustments to the potable water use of batch products to a minimum of 20 gallons per 100 lb (or the starting potable water use level, if lower)
- incorporating energy use reduction for drain water heat exchangers used in batch equipment.

Finally, for the max-tech design options that extended beyond what was typically found in commercially available products (such as permanent magnet motors and drain water heat exchangers) that could not be calibrated against existing units, DOE relied on testing and literature to properly account for the energy savings of these units.

For drain water heat exchangers, DOE performed testing of a batch type ice maker with a commercially available drain water heat exchanger, and used the test results to calibrate the energy savings obtained from this technology for each equipment class where it was applied.

DOE used motor efficiency ratings discussed in the preliminary analysis and verified with stakeholders to scale the motor use of each component using permanent magnet motors. During the NOPR analyses, DOE's energy model was calibrated to properly account for the energy consumption of each component, and for energy reductions resulting in jumps to PSC technologies. Increases in the efficiency of the motor components can then be expressed as reductions in the energy consumption of these components.

DOE calibrated the efficiency gains calculated by the energy model against the design options and test results gathered during the empirical analysis investigation. DOE used this comparison to determine the suite of design options that should be found at the appropriate high-efficiency level, and calibrated the results of the energy against the inspected results.

For example, DOE inspected a pair of IMH–A–Small–B automatic commercial ice makers with measured efficiency levels of 2.2 percent below baseline and 17.5 percent below baseline, and noted the following changes between units:

- Increases in both the evaporator face area and condenser volume, and an increase in the chassis size to accommodate these growths,
- an increase in condenser fan size and a change from an SPM motor to a PSC motor, and
- an increase in compressor EER.

In the energy model, DOE separated out each of the different design options and considered separately, ordering them in order of cost-efficiency. For this equipment class, DOE had the following design options to increase efficiency from baseline to 23.5 percent below baseline, as shown in Table IV.24.

TABLE IV.24—IMH–A–SMALL–B DESIGN OPTIONS

% Below baseline	Design option
0.00	Baseline.
6.22	Increase compressor EER from 4.86 EER to 5.25 EER.
7.71	Increase condenser width (no chassis size increase).
20.52	Increase Evaporator Area (with chassis size increase).
23.51	Switch to PSC Condenser Fan Motor.

In some instances, DOE considered slightly different design options, especially when DOE's analysis found that more efficient compressor options were available. For example, the maximum compressor EER used in the energy modeling analysis was more efficient than the inspected unit compressor EER. This is the reason this suite of design options reaches higher efficiencies. DOE did not consider chassis sizes larger than those available on the market.

DOE believes that these changes help ensure that the energy model results accurately reflect technology behavior in the market. Further details on the analyses are available in chapter 5 of the NOPR TSD.

E. Markups Analysis

DOE applies multipliers called ''markups'' to the MSP to calculate the customer purchase price of the analyzed equipment. These markups are in addition to the manufacturer markup (discussed in section IV.D.4) and are intended to reflect the cost and profit margins associated with the distribution and sales of the equipment between the manufacturer and customer. DOE identified three major distribution channels for automatic commercial ice makers, and markup values were calculated for each distribution channel based on industry financial data. Table IV.25 shows the three distribution

channels and the percentage of the shipments each is assumed to reflect. The overall markup values were then calculated by weighted-averaging the individual markups with market share values of the distribution channels. See chapter 6 of the NOPR TSD for more details on DOE's methodology for markups analysis.

TABLE IV.25—DISTRIBUTION CHANNEL MARKET SHARES

Analysis phase	National account channel: Manufacturer direct to customer (1-party) (%)	Wholesaler channel: Manufacturer to distributor to customer (2-party) (%)	Contractor channel: Contractor purchase from distributor for installation (3-party) (%)
Preliminary Analysis	6	32	62
NOPR	0	38	62

In general, DOE has found that markup values vary over a wide range based on general economic outlook, manufacturer brand value, inventory levels, manufacturer rebates to distributors based on sales volume, newer versions of the same equipment model introduced into the market by the manufacturers, and availability of cheaper or more technologically advanced alternatives. Based on market data, DOE divided distributor costs into (1) direct cost of equipment sales; (2) labor expenses; (3) occupancy expenses; (4) other operating expenses (such as depreciation, advertising, and insurance); and (5) profit. DOE assumed that, for higher efficiency equipment only, the ''other operating costs'' and ''profit'' scale with MSP, while the remaining costs stay constant irrespective of equipment efficiency level. Thus, DOE applied a baseline markup through which all estimated distribution costs are collected as part of the total baseline equipment cost, and the baseline markups were applied as multipliers only to the baseline MSP. Incremental markups were applied as multipliers only to the MSP increments (of higher efficiency equipment compared to baseline) and not to the entire MSP. Taken together the two markups are consistent with economic behavior in a competitive market—the participants are only able to recover costs and a reasonable profit level.

DOE received a number of comments regarding markups after the publication of the preliminary analysis.

AHRI stated that equipment markups often result in retail prices that are lower than what is observed in the market place, and stated that DOE should supplement its analysis with a survey or retail sale prices. (AHRI, No. 49 at pp. 4–5) Scotsman suggested reviewing equipment pricing on the internet because many ice makers are available online. (Scotsman, No. 46 at p. 5)

Scotsman stated that the national account chain is not accurate. Scotsman commented that the national account distribution chain resembles the wholesaler distribution chain, because an equipment supplier is part of the process. The supplier may contract directly with the customer but equipment still goes through another party, according to Scotsman. (Scotsman, No. 42 at p. 97) Manitowoc agreed with Scotsman that the national accounts chain is misrepresented, and actually includes a third party to do installation, repair, and maintenance. (Manitowoc, No. 42 at pp. 99–100)

Manitowoc stated that mechanical contractors are typically not part of the distribution chain. Manitowoc indicated dealers may in fact provide those services, but the model is a little different from the model presented. (Manitowoc, No. 42 at p. 102–3)

Hoshizaki agreed with the analysis of distribution channels. (Hoshizaki, No. 53 at p. 2) Manitowoc suggested another distribution channel exists: rather than a sale to an end-user, the dealer leases it to the customer. (Manitowoc, No. 42 at p. 98) Manitowoc was of the opinion that whether the equipment was sold or leased to the customer, the end result would be that the ultimate equipment price would not be affected. (Manitowoc, No. 42 at p. 99)

Manitowoc questioned the basic methodology of using a base and incremental markup. Manitowoc stated that if it changed a product, it would expect the same gross margin on the incremental cost as on the base. (Manitowoc, No. 42 at p. 104) Manitowoc stated that entities in the distribution chain take the manufacturer's list price and add a markup. Manitowoc stated that by using the incremental markup, DOE is understating the impact in the market place of adding additional costs to raise the efficiency level, and that is not what happens in the market, according to Manitowoc. (Manitowoc, No. 42 at p. 105) Manitowoc stated that the incremental markup should be the same as the baseline markup and that it would be unreasonable to expect that vendors would earn a lower margin on additional costs associated with complying by the increased minimum efficiency regulations. (Manitowoc, No. 54 at p. 3)

With regard to the AHRI, Scotsman, and Manitowoc comments related to retail prices surveys or studies to determine if DOE was underestimating prices, DOE performed a market price survey, reported earlier in the engineering section IV.D.4.c. Previously DOE has not performed retail price surveys, believing that scatter in the data—particularly when internet and non-internet prices are co-mingled—would cause surveys to provide data of poor value or usefulness. The results of the retail price survey performed for the engineering analysis supports this belief.

With regard to the comment that mechanical contractors are typically not part of the distribution chain, DOE is using mechanical contractor cost information to model a three-party distribution channel. Available Census Bureau data as well as comments received at the Framework public meeting indicates that a three-party distribution channel is common. At present the mechanical contractor cost data is the best information available for quantifying the local contractor portion of the three-party channel, and DOE used this data for developing costs contained in this notice. DOE requests specific data or data sources to better categorize the third party costs attributable to local dealers or contractors.

The Scotsman and Manitowoc comments about the national account chain being misrepresented indicate that the national account channel is basically the same as the wholesaler

channel. Thus, the 6 percent of shipments initially assigned to the national account channel will be combined with the wholesaler channel shipments and assessed the wholesaler channel markup. With regard to adding another channel for leased equipment, since Manitowoc suggested the pricing of equipment in such a hypothetical channel would not differ from other equipment, DOE elects to not add an additional channel.

With respect to the comments questioning the use of an incremental markup, DOE believes that there is likely an inaccurate comparison taking place. In competitive markets, such as the automatic commercial ice maker market, the participants are expected to be able to recover costs and a reasonable profit, which is what the markups designed and used by participants would be expected to do. In the DOE analysis, the baseline markup has been calculated to recover all currently existing overhead expenses with baseline equipment costs. DOE's analysis focuses on changes. Profit margin and other costs that change as MSP changes were assigned to incremental markups. Most overhead costs were allocated to the base markup because DOE does not expect these costs to change because of MSP changes brought on by efficiency standards. DOE developed the baseline and incremental markup methodology to ensure all overhead costs are fully collected and a reasonable profit margin is received and to identify costs that change, and apply such to the incremental MSP in the form of incremental markups.

F. Energy Use Analysis

For the preliminary analysis and for the NOPR, DOE estimated energy usage for use in the LCC and NIA models based on the kWh/100 lb ice and gal/100 lb ice values developed in the engineering analysis in combination with other assumptions. In the preliminary analysis, DOE assumed that ice makers on average are used to produce one-half of the ice the machines could produce (*i.e.,* a 50 percent capacity factor). DOE also assumed that when not making ice, on average ice makers would draw 5 watts of power. DOE modeled condenser water usage as ''open-loop'' installations, or installations where water is used in the condenser one time (single pass) and released into the wastewater system.

Several stakeholders agreed with the 50 percent capacity factor being reasonable. Scotsman stated that the 50 percent utilization factor is relatively close, given the wide spectrum that exists based on seasonality and installation location. (Scotsman, Public Meeting Transcript, No. 42 at p. 108) AHRI stated that on average, across all applications and seasons, the 50 percent utilization factor assumed by DOE is appropriate. (AHRI, No. 49 at p. 5) Manitowoc agreed that 50 percent utilization is a good number to use. (Manitowoc, Public Meeting Transcript, No. 42 at p. 110) Hoshizaki, on the other hand, thought 50 percent was on the low side for the industry, and some business types, like 24-hour restaurants, might have much higher usage factors. (Hoshizaki, Public Meeting Transcript, No. 42 at p. 111) NPCC expressed a desire to have information made available to determine if there is an equipment class relationship between the duty cycles and the business type, and whether duty cycle is related to the equipment class and/or the product capacity. NPCC believed that this may determine whether one is more cost-effective to pursue than another. (NPCC, Public Meeting Transcript, No. 42 at p. 111)

For the NOPR, DOE has continued to utilize a 50 percent capacity factor, as most commenters believed it to be a reasonable number and DOE did not receive utilization data in the comments that would lead it to consider alternative capacity factors in the analysis. In response to the Hoshizaki comment and in agreement with the NPCC comment, DOE requests additional information about reasonable values that could be used to vary the assumption by business type.

Several stakeholders commented on the assumption of an open-loop installation for water-cooled condensers. Scotsman commented that the majority of ice makers are installed in open-loop configurations. Scotsman stated that in some business types like hotels or casinos, there will typically be cooling towers and recirculation systems that the ice maker can tap into. In smaller locations without that type of a resource, it would typically be open loop, according to Scotsman. (Scotsman, Public Meeting Transcript, No. 42 at pp. 108–109) Scotsman added that single-pass configuration provides a worst-case energy use, and is appropriate for this analysis. (Scotsman, No. 46 at p. 3) Manitowoc stated that it only knows of installations in casinos or other large projects where ice makers are installed on closed loops, and suspects that most historical installations are open loop. (Manitowoc, No. 42 at p. 110)

NEEA recommended that DOE investigate the market share of automatic commercial ice makers with single-pass condensers, because they use substantially more water than those with other condenser configurations. (NEEA, Public Meeting Transcript, No, 42 at pp. 165–166) NPCC stated that some jurisdictions do not permit open-loop installations because of water usage. (NPCC, Public Meeting Transcript, No. 42 at pp. 109–110)

Hoshizaki suggested placing water-cooled units in closed-loop systems. (Hoshizaki, No. 42 at p. 110) Hoshizaki stated that, in certain areas, water-cooled condensers could be the most effective form of condensing. (Hoshizaki, No. 53 at p. 2)

DOE agrees with Hoshizaki's comment that water-cooled condensers can be a cost-effective form of condensing. DOE does not envision promulgating any rule that would eliminate water-cooled condensers. Since DOE's regulatory authority relates to the efficiency of equipment manufactured or sold in the U.S. but not to how equipment is installed or used, DOE does not plan to promulgate rules mandating use of closed loops. DOE is not proposing to perform the research suggested by NEEA into the prevalence of open- versus closed-loop installations. It is always DOE's objective to model energy usage as accurately as possible, so DOE requests stakeholder assistance in quantifying the impact of local regulations such as any local regulation potentially forbidding an open-loop installation. Scotsman and Manitowoc stated that, historically, most installations were likely open-loop, but the regulations discussed by NPCC would argue that in the future such is less likely to be true. DOE's analyses to date have not included design options that would change condenser water usage, a fact that means the question of modeling condenser water in the LCC models condenser water usage as open- or closed-loop impacts the absolute value of life-cycle costs and total national costs of ownership and operation, but not LCC savings or increases/decreases in NPV. Given that Scotsman and Manitowoc believe that historically most installations have likely been open loop, DOE chose to continue to model water usage as an open-loop (or single-pass) system.

G. Life-Cycle Cost and Payback Period Analysis

In response to the requirements of EPCA in (42 U.S.C. 6295(o)(2)(B)(i) and 6313(d)(4)), DOE conducts LCC and PBP analysis to evaluate the economic impacts of potential amended energy conservation standards on individual commercial customers—that is, buyers of the equipment. This section describes

the analyses and the spreadsheet model DOE used. NOPR TSD chapter 8 details the model and all the inputs to the LCC and PBP analyses.

LCC is defined as the total customer cost over the lifetime of the equipment, and consists of installed cost (purchase and installation costs) and operating costs (maintenance, repair, water,[36] and energy costs). DOE discounts future operating costs to the time of purchase and sums them over the expected lifetime of the unit of equipment. PBP is defined as the estimated amount of time it takes customers to recover the higher installed costs of more-efficient equipment through savings in operating costs. DOE calculates the PBP by dividing the increase in installed costs by the savings in annual operating costs. DOE measures the changes in LCC and in PBP associated with a given energy and water use standard level relative to a base-case forecast of equipment energy and water use (or the ''baseline energy and water use''). The base-case forecast reflects the market in the absence of new or amended energy conservation standards.

The installed cost of equipment to a customer is the sum of the equipment purchase price and installation costs. The purchase price includes MPC, to which a manufacturer markup (which is assumed to include at least a first level of outbound freight cost) is applied to obtain the MSP. This value is calculated as part of the engineering analysis (chapter 5 of the NOPR TSD). DOE then applies additional markups to the equipment to account for the costs associated with the distribution channels for the particular type of equipment (chapter 6 of the NOPR TSD). Installation costs are varied by State depending on the prevailing labor rates.

Operating costs for automatic commercial ice makers are the sum of maintenance costs, repair costs, water, and energy costs. These costs are incurred over the life of the equipment and therefore are discounted to the base year (2018, which is the proposed effective date of the amended standards that will be established as part of this rulemaking). The sum of the installed cost and the operating cost, discounted to reflect the present value, is termed the life-cycle cost or LCC.

Generally, customers incur higher installed costs when they purchase higher efficiency equipment, and these cost increments will be partially or wholly offset by savings in the operating costs over the lifetime of the equipment. Usually, the savings in operating costs are due to savings in energy costs because higher efficiency equipment uses less energy over the lifetime of the equipment. Often, the LCC of higher efficiency equipment is lower compared to lower-efficiency equipment.

The PBP of higher efficiency equipment is obtained by dividing the increase in the installed cost by the decrease in annual operating cost. For this calculation, DOE uses the first-year operating cost decreases as the estimate of the decrease in operating cost, noting that some of the repair and maintenance costs used in the analysis are annualized estimates of costs. DOE calculates a PBP for each efficiency level of each equipment class. In addition to the energy costs (calculated using the electricity price forecast for the first year), the first-year operating costs also include annualized maintenance and repair costs.

Apart from MSP, installation costs, and maintenance and repair costs, other important inputs for the LCC analysis are markups and sales tax, equipment energy consumption, electricity prices and future price trends, expected equipment lifetime, and discount rates.

As part of the engineering analysis, design option levels were ordered based on increasing efficiency (decreased energy and water consumption) and increasing MSP values. DOE developed four to seven energy use levels for each equipment class, henceforth referred to as ''efficiency levels,'' through the analysis of engineering design options. For all equipment classes, efficiency levels were set at specific intervals—*e.g.,* 10 percent improvement over base energy usage, 15 percent improvement, 20 percent improvement. The max-tech efficiency level is the only exception. At the max-tech level, the efficiency improvement matched the specific levels identified in the engineering analysis.

The base efficiency level (level 1) in each equipment class is the least efficient and the least expensive equipment in that class. The higher efficiency levels (level 2 and higher) exhibit progressive increases in efficiency and cost with the highest efficiency level corresponding to the max-tech level. LCC savings and PBP are calculated for each selected efficiency level of each equipment class.

Many inputs for the LCC analysis are estimated from the best available data in the market, and in some cases the inputs are generally accepted values within the industry. In general, each input value has a range of values associated with it. While single representative values for each input may yield an output that is the most probable value for that output, such an analysis does not give the general range of values that can be attributed to a particular output value. Therefore, DOE carried out the LCC analysis in the form of Monte Carlo simulations[37] in which certain inputs were expressed as a range of values and probability distributions that account for the ranges of values that may be typically associated with the respective input values. The results or outputs of the LCC analysis are presented in the form of mean LCC savings, percentages of customers experiencing net savings, net cost and no impact in LCC, and median PBP. For each equipment class, 10,000 Monte Carlo simulations were carried out. The simulations were conducted using Microsoft Excel and Crystal Ball, a commercially available Excel add-in used to carry out Monte Carlo simulations.

LCC savings and PBP are calculated by comparing the installed costs and LCC values of standards-case scenarios against those of base-case scenarios. The base-case scenario is the scenario in which equipment is assumed to be purchased by customers in the absence of the proposed energy conservation standards. Standards-case scenarios are scenarios in which equipment is assumed to be purchased by customers after the amended energy conservation standards, determined as part of the current rulemaking, go into effect. The number of standards-case scenarios for an equipment class is equal to one less than the total number of efficiency levels in that equipment class because each efficiency level above efficiency level 1 represents a potential amended standard. Usually, the equipment available in the market will have a distribution of efficiencies. Therefore, for both base-case and standards-case scenarios, in the LCC analysis, DOE assumed a distribution of efficiencies in the market, and the distribution was assumed to be spread across all efficiency levels in the LCC analysis (see NOPR TSD chapter 10).

[36] Water costs are the total of water and wastewater costs. Wastewater utilities tend to not meter customer wastewater flows, and base billings on water commodity billings. For this reason, water usage is used as the basis for both water and wastewater costs, and the two are aggregated in the LCC and PBP analysis.

[37] Monte Carlo simulation is, generally, a computerized mathematical technique that allows for computation of the outputs from a mathematical model based on multiple simulations using different input values. The input values are varied based on the uncertainties inherent to those inputs. The combination of the input values of different inputs is carried out in a random fashion to simulate the different probable input combinations. The outputs of the Monte Carlo simulations reflect the various probable outputs that are possible due to the uncertainties in the inputs.

Recognizing that different types of businesses and industries that use automatic commercial ice makers face different energy prices, and apply different discount rates to purchase decisions, DOE analyzed variability and uncertainty in the LCC and PBP results by performing the LCC and PBP calculations for seven types of businesses: (1) Health care; (2) lodging; (3) foodservice; (4) retail; (5) education; (6) food sales; and (7) offices. Different types of businesses face different energy prices and also exhibit differing discount rates that they apply to purchase decisions.

Expected equipment lifetime is another input for which it is inappropriate to use a single value for each equipment class. Therefore, DOE assumed a distribution of equipment lifetimes that are defined by Weibull survival functions.[38]

Equipment lifetime is a key input for the LCC and PBP analysis. For automatic commercial ice maker equipment, there is a general consensus among industry stakeholders that the typical equipment lifetime is approximately 7 to 10 years with an average of 8.5 years. There was no data or comment to suggest that lifetimes are unique to each equipment class. Therefore, DOE assumed a distribution of equipment lifetimes that is defined by Weibull [39] survival functions, with an average value of 8.5 years.

Another factor influencing the LCC analysis is the State in which the automatic commercial ice maker is installed. Inputs that vary based on this factor include installation costs, water and energy prices, and sales tax (plus the associated distribution chain markups). At the national level, the spreadsheets explicitly modeled variability in the model inputs for water price, electricity price, and markups using probability distributions based on the relative populations in all States.

Detailed descriptions of the methodology used for the LCC analysis, along with a discussion of inputs and results, are presented in chapter 8 and appendices 8A and 8B of the NOPR TSD.

1. Equipment Cost

To calculate customer equipment costs, DOE multiplied the MSPs developed in the engineering analysis by the distribution channel markups, described in section IV.E. DOE applied baseline markups to baseline MSPs and incremental markups to the MSP increments associated with higher efficiency levels.

In the preliminary analysis, DOE developed a projection of price trends for automatic commercial ice maker equipment, indicating that based on historical price trends the MSP would be projected to decline by 0.4 percent from the 2012 estimation of MSP values through the 2018 assumed start date of new or amended standards. The preliminary analysis also indicated an approximately 1.6 percent decline from the MSP values estimated in 2012 to the end of the 30-year NIA analysis period used in the preliminary analysis. Price trends generated considerable discussion during the LCC presentation at the February 2012 preliminary analysis public meeting (and nearly all comments specific to the NIA were concerning price trends).

Scotsman stated that it typically sees some increase in costs and that it tries to recapture at least some of the increased cost in the form of price increases and usually cannot recover all of it. Scotsman stated that it does not expect to see prices going down over the years and does not think it makes a lot of sense. Scotsman added that for household refrigerators and other industries, much of the price decrease that has been seen over the years is offshored manufacturing. The automatic commercial ice maker manufacturers do not have the scale to consider doing that, according to Scotsman. (Scotsman, Public Meeting Transcript, No. 42 at pp. 127–128) Scotsman analyzed the historical shipments data and provided graphs showing how different the forecast would be if a different time period was selected. Scotsman suggested that a long-term growth trend of 1.5 percent is most realistic. (Scotsman, No. 46 at pp. 6–7)

NRDC stated that price learning is theoretically expected and empirically demonstrated, and that it supported DOE's incorporation of price learning in the rulemaking. (NRDC, No. 48 at p. 2)

AHRI urged DOE to assume that price learning is zero, or in other words, to hold MSP constant. AHRI stated that it had performed an analysis of the data used by DOE and that it believed that the data did not support an assumption of price learning greater than zero. (AHRI, No. 49 at p. 5 and exhibit A)

Manitowoc stated that there is no real basis to expect that the manufacturing costs of ice machines will decrease in the future due to efficiency gains in production because the ice machine designs are mature and the manufacturing processes are stable. Manitowoc added that the increase in costs associated with design options is only due to higher cost components or higher cost material employed and that the annual production volumes do not allow for further investment in automation of the manufacturing processes beyond what is already in place. (Manitowoc, No. 54 at p. 4)

As is customary between the preliminary analysis and the NOPR phases of a rulemaking, DOE re-examined the data available and updated the analyses, in this specific instance, the price trend analysis. At a high level, DOE agrees with the NRDC comment that evidence indicates price learning is theoretically expected. In response to the AHRI, Manitowoc, and Scotsman comments that the data do not support the price trends, DOE re-examined the data used in the analysis, and re-analyzed price trends with updated data. In the preliminary analysis, DOE used a Producer Price Index (PPI) that included air-conditioning, refrigeration, and forced air heating equipment. For the NOPR, DOE was able to identify a PPI that was a subset of the PPI used for the preliminary analysis. The subset includes only commercial refrigeration and related equipment, and excludes unrelated equipment. Using this PPI for the automatic commercial ice maker price trends analysis yields a price decline of roughly 1.6 percent over the period of 2012 (the year for which MSP was estimated) through 2047.

2. Installation, Maintenance, and Repair Costs

a. Installation Costs

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. The installation costs may vary from one equipment class to another, but they typically do not vary among efficiency levels within an equipment class. Most automatic commercial ice makers are installed in fairly standard configurations. For its preliminary analysis, DOE tentatively concluded that the engineering design options do not impact the installation cost within an equipment class. DOE therefore assumed that the installation cost for automatic commercial ice makers does not vary among efficiency levels within an equipment class. Costs that do not vary with efficiency levels do not impact the LCC, PBP, or NIA results. In the preliminary analysis, DOE estimated the installation cost as a fixed percentage of the total MSP for the baseline efficiency level for a given equipment class, set at 10 percent.

[39] Weibull survival function is a continuous probability distribution function that is commonly used to approximate the distribution of equipment lifetimes.

Manitowoc agreed with DOE's assumption that installation costs generally would be unaffected by moving to the higher efficiency level. However, Manitowoc pointed out that some efficiency differences may cause variation in installation costs. Manitowoc further explained that many remote condensers require a crane for installation; therefore, bigger condensers of automatic commercial ice maker equipment with higher efficiency levels might result in higher rental and labor costs associated with the installation. (Manitowoc, Public Meeting Transcript, No. 42 at p. 136) In its written comments to DOE, Manitowoc further clarified that higher efficiency equipment would not incur additional installation costs unless the size of the equipment increases in such a way as to exceed the industry norms. (Manitowoc, No. 54 at p. 4) However, Hoshizaki indicated installation costs will increase with higher levels of energy efficiency due to special installation requirements for the new machine and possible changes to the structure that might be required. Furthermore, AHRI commented that it is incorrect for DOE to assume that changes in installation will be negligible for more-efficient equipment. (AHRI, No. 49 at p. 5)

Scotsman pointed out that if the technology were assumed to involve a drain water heat exchange, the installation costs would increase. (Scotsman, No. 46 at p. 3)

In responses to the comments above, DOE further evaluated the costs associated with installation and revised the installation cost estimation methods. For the NOPR, DOE estimated material and labor cost to install equipment based on RS Means cost estimation data [40] and on telephone conservations with contractors. Estimated installation costs vary by equipment class and by State. DOE decided to continue to assume installation cost will be constant for all efficiency levels within an equipment class.

In response to Manitowoc's comment that greater equipment size might result in higher rental and labor costs, DOE notes that while the initial decision to avoid equipment size increases in the engineering analysis was eliminated, DOE attempted to minimize equipment size increases. Thus, proposed standard levels should not add significantly to labor and crane rental costs. Nor does DOE believe the size increases would require structural changes as hypothesized by Hoshizaki. In response to the Manitowoc and Scotsman comments about drain water heat exchanger installation costs, DOE notes the promotional material of drain water heat exchanger manufacturers indicate the units can be installed with four additional water attachments, a level of effort that would likely not add to the cost of installations. Finally, in response to Hoshizaki's general statement that higher efficiency levels will impose specialized installation requirements, a review of the design options included in the DOE engineering analysis did not reveal any options likely to impose specific cost increases. To better respond to the Hoshizaki comment, DOE requests specificity—which design options will impose increases in installation costs and what would the magnitude of such cost increases be?

b. Repair and Maintenance Costs

The repair cost is the average annual cost to the customer for replacing or repairing components in the automatic commercial ice maker that have failed. In the preliminary analysis, DOE approximated the repair cost as a 3-percent fixed percentage of the total baseline MSP for each equipment class and assumed that repair costs were constant within an equipment class for all efficiency levels.

Maintenance costs are associated with maintaining the proper operation of the equipment. The maintenance cost does not include the costs associated with the replacement or repair of components that have failed, which are included as repair costs. In the preliminary analysis, DOE applied a 3-percent preventative maintenance cost that remains constant across all equipment efficiency levels because data were not available to indicate how maintenance costs vary with equipment levels.

Scotsman stated that, in general, whenever new technology is introduced, failure rates increase. Scotsman stated that when the failures occur during the warranty period, the cost falls on manufacturers. Ice makers stress components in ways that they are not stressed in steady-state machines, according to Scotsman, so even with well-known technologies it is not known how their failure rates will fare in ice makers. In addition, Scotsman commented that if the technology was assumed to involve a drain water heat exchanger, the maintenance cost would increase. (Scotsman, No. 46 at pp. 3–4) Likewise, Hoshizaki stated that repair costs are relative to each machine and that it is difficult to compute a standard average. Manufacturers are still working to analyze the effects of the 2010 standards on repair costs, according to Hoshizaki. (Hoshizaki, No. 46 at pp. 3–4)

Manitowoc commented that the repair costs will be affected by the efficiency levels. Manitowoc stated that is has specific concerns about some components such as motors. Manitowoc pointed out that ECM motors might enhance the energy efficiencies, but these motors are probably less reliable than standard permanent split capacitor motors because ECM motors have more parts. Manitowoc further stated that, in general, more parts increase the chances that a component will fail, which in turn potentially increases the repair costs. (Manitowoc, Public Meeting Transcript, No. 42 at p. 136) In addition, Scotsman stated that modeling repair cost as a percentage of baseline costs would understate repair cost. Also using the example of an ECM fan motor, Scotsman explained that ECM motor has an incremental cost of $35 to install; however, when it needs to be replaced, it is considerably more costly than the replacement of the motors that are currently used on the market. Additionally, Scotsman also noted the ECM fan motor has more parts than the current motors that are commonly applied in the market, making it likely to fail more often. Therefore, according to Scotsman, ECM fan motors might require higher average annual repair costs than current motors used in the baseline units. (Scotsman, No. 46 at pp. 3–4) Hoshizaki pointed out higher water and energy efficiency level may increase maintenance costs. Hoshizaki elaborated that equipment with lower water usage and improved electrical efficiencies might need more frequent maintenance such as cleaning. (Hoshizaki, No. 53 at p. 2)

In addition, Howe commented on the impact of new standards on repairing and maintenance costs. Howe stated that the modification of new ice makers will cause increased repair and maintenance costs due to the need to educate service personnel. The percentage of the baseline costs will increase, according to Howe. (Howe, No. 51 at p. 4)

In response to these comments, DOE evaluated how repair and maintenance costs were estimated and revised the methodology. For repair costs, DOE examined the major components of ice makers and identified expected failure rates for each component. For those components for which available information indicates a failure might occur within the expected 8.5-year equipment life, DOE estimated repair or replacement costs. Under this methodology, repair and replacement costs are based on the original

[40] RS Means Company, Inc. *2013 RS Means Electrical Cost Data.* 2013. Kingston, MA.

equipment costs, so the more expensive the components are, the greater the expected repair or replacement cost. For design options modeled in the engineering analysis, DOE estimated repair costs and if they were different than the baseline cost, the repair costs were either increased or decreased accordingly. (Although theoretically possible, in the case of the ice maker analysis, repair costs did not decrease with efficiency levels for any equipment class.) Thus, consistent with Hoshizaki's comment about the difficulty of estimating one standard average, DOE now estimates different repair and replacement costs for all equipment classes.

DOE's revision to the repair cost methodology is consistent with the Manitowoc, Hoshizaki, Scotsman, and Howe comments that repair costs should increase with efficiency level. Consistent with the Manitowoc and Scotsman comments, DOE assumed that ECM fan motors would increase repair costs relative to the baseline. In response to Scotsman's comments about drain water heat exchangers, DOE notes that manufacturer literature indicates an expected useful life greater than 8.5 years, so no replacement was assumed for this component.

In the NOPR analyses, DOE estimated material and labor costs for preventative maintenance based on RS Means cost estimation data and on telephone conservations with contractors. DOE assumed maintenance cost would remain constant for all efficiency levels within an equipment class. In response to Hoshizaki's comment about the impact of reduced water usage on maintenance, the DOE analyses for 7 of 12 primary equipment classes did not involve changes to water usage. In the remaining 5 (batch) equipment classes, DOE's analysis did not assume potable water usage would be reduced below 20 gallons per 100 lb ice—a level manufacturers indicated was a point below which maintenance costs would increase. (Scotsman, Public Meeting Transcript, No. 42 at p. 64; Manitowoc, Public Meeting Transcript, No. 42 at p. 65) Thus, for the NOPR, DOE assumes that maintenance costs will not vary by efficiency level.

3. Annual Energy and Water Consumption

Chapter 7 of the NOPR TSD details DOE's analysis of annual energy and water usage at various efficiency levels of automatic commercial ice makers. Annual energy and water consumption inputs by automatic commercial ice maker equipment class are based on the engineering analysis estimates of kilowatt-hours of electricity per 100 lb ice and gallons of water per 100 lb ice, translated to annual kilowatt-hours and gallons in the energy and water use analysis (chapter 7 of the NOPR TSD). The development of energy and water usage inputs is discussed in section IV.G.6 along with public input and DOE's response to the public input.

4. Energy Prices

DOE calculated average commercial electricity prices using the EIA Form EIA–826 data obtained online from the ''Database: Sales (consumption), revenue, prices & customers'' Web page.[41] The EIA data reports average commercial sector retail prices calculated as total revenues from commercial sales divided by total commercial energy sales in kilowatt-hours, by State and for the nation. DOE received no recommendations or suggestions regarding this set of assumptions at the February 2012 preliminary analysis public meeting or in written comments.

5. Energy Price Projections

To estimate energy prices in future years for the preliminary analysis TSD, DOE multiplied the average regional energy prices described above by the forecast of annual average commercial energy price indices developed in the Reference Case from *AEO2013*.[42] *AEO2013* forecasted prices through 2040. To estimate the price trends after 2040, DOE assumed the same average annual rate of change in prices as exhibited by the forecast over the 2031 to 2040 period. DOE received no recommendations or suggestions regarding this set of assumptions at the February 2012 preliminary analysis public meeting or in written comments.

6. Water Prices

To estimate water prices in future years for the preliminary analysis TSD, DOE used price data from the 2008,[43] 2010,[44] and 2012 American Water Works Water (AWWA) and Wastewater Surveys.[45] The AWWA 2012 survey was the primary data set. No data exists to disaggregate water prices for individual business types, so DOE varied prices by state only and not by business type within a state. For each state, DOE combined all individual utility observations within the state to develop one value for each state for water and wastewater service. Since water and wastewater billings are frequently tied to the same metered commodity values, DOE combined the prices for water and wastewater into one total dollars per 1,000 gallons figure. DOE used the Consumer Price Index (CPI) data for water-related consumption (1973–2012)[46] in developing a real growth rate for water and wastewater price forecasts.

During the public meeting and in written comments, stakeholders commented on the water prices DOE used in its LCC analysis. NPCC stated that water and wastewater price escalation has been systematically higher than the CPI. Further, NPCC pointed out that EPA's water-related regulations governed by the Clean Water Act might level out the escalation rates once the regulations' requirements were satisfied, even though NPCC does not anticipate the escalation rates will diminish much. Given the impact of EPA's latest water-related regulations was not completed, NPCC then raised the question whether DOE should use both a higher escalation rate and CPI in its analysis. NPCC then suggested using a higher escalated rate in the analysis for a short-run period until the effective date of EPA's latest water-related regulations and move to the CPI for the longer term analysis starting with the effective date of EPA's relevant regulations. (NPCC, Public Meeting Transcript, No, 42 at pp. 132–134) In addition, the Alliance argued that water use and energy use cannot be compared on a simple price basis because of key differences between the two resources. The Alliance stated that, first, energy comes from multiple sources and is a commodity whose prices fluctuate based on supply and demand. Freshwater, on the other hand, is in limited supply and water prices are heavily regulated based on the cost of treatment and delivery, which is less directly affected by supply and demand, according to the Alliance. The Alliance

[41] U.S. Energy Information Administration. *Sales and revenue data by state, monthly back to 1990 (Form EIA–826).* (Last accessed June 26, 2013). *www.eia.gov/electricity/data.cfm#sales*

[42] The spreadsheet tool that DOE used to conduct the LCC and PBP analyses allows users to select price forecasts from either *AEO*'s High Economic Growth or Low Economic Growth Cases. Users can thereby estimate the sensitivity of the LCC and PBP results to different energy price forecasts.

[43] American Water Works Association. *2008 Water and Wastewater Rate Survey.* 2009. Denver, CO. Report No. 54004.

[44] American Water Works Association. *2010 Water and Wastewater Rate Survey.* 2011. Denver, CO. Report No. 54006.

[45] American Water Works Association. *2012 Water and Wastewater Rate Survey.* 2013. Denver, CO. Report No. 54008.

[46] The Bureau of Labor Statistics defines CPI as a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. For more information see *www.bls.gov/cpi/home.htm.*

further stated that when water demand overcomes the readily available fresh water resources in the U.S., the alternative water sources will likely require more costly infrastructure and operational changes such as desalination to fulfill the demand for fresh water, which is also a very energy intensive process. Therefore, the Alliance recommended that DOE consider the marginal costs of alternative water sources, such as desalination, in its analyses to properly account for all water costs as applied to water-cooled condensers. (Alliance, No. 45 at p. 4)

DOE appreciates the comments that EPA water regulations under the Clean Water Act may impact the escalation rate of water price used in DOE's analysis and the observation about desalination plants being the next source of water available in many localities. With respect to the Clean Water Act comment, DOE notes that the Clean Water Act has been in existence since 1972. Thus, the water price trends should include the impacts of historical costs attributable to the Clean Water Act. Throughout that entire period, the CPI for water utility costs grew at an average rate of 1.6 percent faster than the total CPI, perhaps validating the NPCC point. As for capturing the effects of unknown future EPA regulations, DOE considers this a speculative effort, and DOE has long adhered to a guiding principle that the analyses avoid speculating in this fashion. With respect to the comment about desalination and the accompanying suggestion that DOE should use marginal water prices, DOE has developed water prices using recent water price data, which would include resource costs that underlie the provision of water. Looking forward, DOE acknowledges that new water resources brought online in future years may differ from those of the past, but DOE has not identified a source that carefully and systematically forecasts the impact of future developments of this nature, as the AEO2013 does in the case of electricity. Thus, to attempt to project growth rates for 50 states to capture these resource changes would be speculative. Rather than speculate, DOE has updated the calculation of State-level water prices with the inclusion of the 2012 AWWA survey [47] and additional consumer price index values.

7. Discount Rates

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE determined the discount rate by estimating the cost of capital for purchasers of automatic commercial ice makers. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted average cost of debt and equity financing, or the weighted average cost of capital (WACC), less the expected inflation.

To estimate the WACC of automatic commercial ice maker purchasers, DOE used a sample of nearly 1,200 companies grouped to be representative of operators of each of the commercial business types (health care, lodging, foodservice, retail, education, food sales, and offices) drawn from a database of 6,177 U.S. companies presented on the Damodaran Online Web site.[48] This database includes most of the publicly-traded companies in the United States. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of automatic commercial ice makers. For each company in the sample, DOE combined company-specific information from the Damodaran Online Web site, long-term returns on the Standard & Poor's 500 stock market index from the Damodaran Online Web site, nominal long-term Federal government bond rates, and long-term inflation to estimate a WACC for each firm in the sample.

For most educational buildings and a portion of the office buildings and cafeterias occupied and/or operated by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on a 40-year geometric mean of an index of long-term tax-exempt municipal bonds (≤20 years).[49] [50] Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long-term (≤10 years) U.S. government securities.[51]

DOE recognizes that within the business types purchasing automatic commercial ice makers there will be small businesses with limited access to capital markets. Such businesses tend to be viewed as higher risk by lenders and face higher capital costs as a result. To account for this, DOE included an additional risk premium for small businesses. The premium, 1.9 percent, was developed from information found on the Small Business Administration Web site.[52]

Chapter 8 of the TSD provides more information on the derivation of discount rates. The average discount rate by business type is shown on Table IV.26.

TABLE IV.26—AVERAGE DISCOUNT RATE BY BUSINESS TYPE

Business type	Average discount rate (real) *(%)*
Health Care	2.7
Lodging	6.8
Foodservice	5.8
Retail	4.6
Education	3.0
Food Sales	5.1
Office	4.6

8. Lifetime

DOE defines lifetime as the age at which typical automatic commercial ice maker equipment is retired from service. DOE estimated equipment lifetime based on its discussion with industry experts, and concluded a typical lifetime of 8.5 years. AHRI agreed with DOE's proposed average equipment lifetime of 8.5 years. (Alliance, No. 49 at p. 5) Hoshizaki agreed that 8.5 years is a fair assumption for commercial cube type ice makers. However, Hoshizaki stated that continuous type ice makers might have a shorter life. (Hoshizaki, No. 53 at p. 2)

For the NOPR analyses, DOE elected to use an 8.5-year average life for all equipment classes. With regard to the Hoshizaki statement that continuous type ice makers might have shorter life spans, DOE requests specific information to assist in determining whether continuous and batch type equipment should be analyzed using differing assumptions for equipment

[47] American Water Works Association. *2012 Water and Wastewater Rate Survey*. 2013. Denver, CO. Report No. 54008.

[48] Damodaran financial data is available at: *http://pages.stern.nyu.edu/~adamodar/* (Last accessed January 31, 2013).

[49] Federal Reserve Bank of St. Louis, *State and Local Bonds—Bond Buyer Go 20-Bond Municipal Bond Index*. (Last accessed April 6, 2012). Annual data for 1973–2011 was available at: *http://research.stlouisfed.org/fred2/series/MSLB20/downloaddata?cid=32995*).

[50] Rate for 2012 calculated from monthly data. Data source: U.S. Federal Reserve (Last accessed February 20, 2013) (Available at: *www.federalreserve.gov/releases/h15/data.htm*).

[51] Rate calculated with 1973–2012 data. Data source: U.S. Federal Reserve (Last accessed February 20, 2013) (Available at: *www.federalreserve.gov/releases/h15/data.htm*).

[52] Small Business Administration data on loans between $10,000 and $99,000 compared to AAA Corporate Rates. <*http://www.sba.gov/advocacy/7540/6282*> Data last accessed on June 10, 2013.

life. All literature on the subject of ice maker lifetimes reviewed by DOE, including comments received during the Framework phase of this rulemaking, indicates a 7 to 10 year life, with 8.5 years being a reasonable average. DOE therefore is proposing in this NOPR to use 8.5 years as automatic commercial ice maker lifetime for DOE's LCC analysis for covered automatic commercial ice maker equipment, but would welcome additional data concerning specific differences between equipment classes.

9. Compliance Date of Standards

EPCA prescribes that DOE must review and determine whether to amend performance-based standards for cube type automatic commercial ice makers by January 1, 2015. (42 U.S.C. 6313(d)(3)(A)) In addition, EPCA requires that the amended standards established in this rulemaking must apply to equipment that is manufactured on or after 3 years after the final rule is published in the **Federal Register** unless DOE determines, by rule, that a 3-year period is inadequate, in which case DOE may extend the compliance date for that standard by an additional 2 years. (42 U.S.C. 6313(d)(3)(C)) DOE began this rulemaking with the expectation of completing it prior to the January 1, 2015 required date, and, therefore, assumed during the preliminary analysis that new and amended standards would take effect in 2016. However, for the NOPR analyses, based on the January 1, 2015 statutory deadline and giving manufacturers 3 years to meet the new and amended standards, DOE assumes that the most likely compliance date for the standards set by this rulemaking would be January 1, 2018. Therefore, DOE calculated the LCC and PBP for automatic commercial ice makers under the assumption that compliant equipment would be purchased in 2018, the year when compliance with the amended standard is required. DOE requests comments on the January 1, 2018 effective date.

10. Base-Case and Standards-Case Efficiency Distributions

To estimate the share of affected customers who would likely be impacted by a standard at a particular efficiency level, DOE's LCC analysis considers the projected distribution of efficiencies of equipment that customers purchase under the base case (that is, the case without new energy efficiency standards). DOE refers to this distribution of equipment efficiencies as a base-case efficiency distribution.

DOE's methodology to estimate market shares of each efficiency level within each equipment class is based on an analysis of the automatic commercial ice makers currently available for purchase by customers. DOE analyzed all available models, calculated the percentage difference between the baseline energy usage embodied in the ice maker rulemaking analyses, and organized the available units by the efficiency levels. DOE then calculated the percentage of available models falling within each efficiency level bin. This efficiency distribution was used in the LCC and other downstream analyses as the baseline efficiency distribution.

11. Inputs to Payback Period Analysis

Payback period is the amount of time it takes the customer to recover the higher purchase cost of more energy-efficient equipment as a result of lower operating costs. Numerically, the PBP is the ratio of the increase in purchase cost to the decrease in annual operating expenditures. This type of calculation is known as a ''simple'' PBP because it does not take into account changes in operating cost over time (*i.e.,* as a result of changing cost of electricity) or the time value of money; that is, the calculation is done at an effective discount rate of zero percent. PBPs are expressed in years. PBPs greater than the life of the equipment mean that the increased total installed cost of the more-efficient equipment is not recovered in reduced operating costs over the life of the equipment, given the conditions specified within the analysis such as electricity prices.

The inputs to the PBP calculation are the total installed cost to the customer of the equipment for each efficiency level and the average annual operating expenditures for each efficiency level in the first year. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not used.

12. Rebuttable Presumption Payback Period

EPCA (42 U.S.C. 6295(o)(2)(B)(iii) and 6313(d)(4)) established a rebuttable presumption that a new or amended standards are 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 savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure.

While DOE examined the rebuttable presumption criterion, it considered whether the standard levels considered are economically justified through a more detailed analysis of the economic impacts of these levels pursuant to 42 U.S.C. 6295(o)(2)(B)(iii) 6313(d)(4). The results of this analysis served as the basis for DOE to evaluate the economic justification for a potential standard level definitively (thereby supporting or rebutting the results of any preliminary determination of economic justification).

H. National Impact Analysis—National Energy Savings and Net Present Value

The NIA assesses the NES and the NPV of total customer costs and savings that would be expected as a result of the amended energy conservation standards. The NES and NPV are analyzed at specific efficiency levels (*i.e.,* TSL) for each equipment class of automatic commercial ice makers. DOE calculates the NES and NPV based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the LCC analysis. For the NOPR analysis, DOE forecasted the energy savings, operating cost savings, equipment costs, and NPV of customer benefits for equipment sold from 2018 through 2047—the year in which the last standards-compliant equipment is shipped during the 30-year analysis.

DOE evaluates the impacts of the amended standards by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and customer costs for each equipment class in the absence of any amended energy conservation standards. DOE compares these base-case projections with projections characterizing the market for each equipment class if DOE adopted the amended standards at each TSL. For the standards cases, DOE assumed a ''roll-up'' scenario in which equipment at efficiency levels that do not meet the standard level under consideration would ''roll up'' to the efficiency level that just meets the proposed standard level, and equipment already being purchased at efficiency levels at or above the proposed standard level would remain unaffected.

DOE uses a Microsoft Excel spreadsheet model to calculate the energy savings and the national customer costs and savings from each TSL. The NOPR TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by interacting with these spreadsheets. The NIA spreadsheet model uses average values as inputs (as opposed to probability distributions of

key input parameters from a set of possible values).

For the current analysis, the NIA used projections of energy prices and commercial building starts from the *AEO2013* Reference Case. In addition, DOE analyzed scenarios that used inputs from the *AEO2013* Low Economic Growth and High Economic Growth Cases. These cases have lower and higher energy price trends, respectively, compared to the Reference Case. NIA results based on these cases are presented in chapter 10 of the NOPR TSD.

A detailed description of the procedure to calculate NES and NPV, and inputs for this analysis, are provided in chapter 10 of the NOPR TSD.

1. Shipments

DOE obtained data from AHRI and U.S. Census Bureau's Current Industrial Reports (CIR) to estimate historical shipments for automatic commercial ice makers. AHRI provided DOE with automatic commercial ice maker shipment data for 2010 describing the distribution of shipments by equipment class and by harvest capacity. AHRI's data to DOE also included a 11-year history of total shipments from 2000 to 2010. Additionally, DOE collected total automatic commercial ice maker shipment data for the period of 1973 to 2009 from the CIR. DOE reviewed the total shipments in the AHRI and CIR data, and noted that the CIR-reported shipments were consistently higher than the AHRI-reported shipments. DOE considered the possibility that these discrepancies were associated with net exports. However, the CIR data presented exports as a percentage of total production at a high level of industry aggregation, thus making it impossible to identify ice maker exports as a percentage of ice maker production. DOE requested input to aid in understanding the differences between the AHRI and CIR shipments data. DOE identified one source with identifiable export information, the North American Association of Food Equipment Manufacturers (NAFEM). NAFEM data for two recent calendar years (2007 and 2008) showed approximately 20 percent of total ice maker shipments associated with food service equipment as exports. Applying a 20 percent export factor to the CIR shipments data brought the CIR data into approximate agreement with the AHRI data.

For the preliminary analysis, DOE relied on the CIR shipment values, reduced 20 percent for exports. Using adjusted CIR data, DOE created a rolling estimate of total existing stock by aggregating historical shipments across 8.5-year historical periods. DOE used the CIR data to estimate a time series of shipments and total stock for 1994 to 2006—at the time of the analysis, the last year of data available without significant gaps in the data due to disclosure limitations. For each year, using shipments, stock, and the estimated 8.5-year life of the equipment, DOE estimated that, on average, 14 percent of shipments were for new installations and the remainder for replacement of existing stock.

DOE then combined the historical shipments, disaggregated between shipments for new installations and those for replacement of existing stock, and the historical stock values with projections of new construction activity from *AEO2011* to generate a forecast of shipments. Stock and shipments were first disaggregated to individual business types based on data developed for DOE on commercial ice maker stocks.[53] The business types and share of stock represented by each type are shown in Table IV.27. Using a Weibull distribution assuming equipment has an average life of 8.5 years and lasts from 5 to 11 years, DOE developed a 30-year series of replacement ice maker shipments. Using the base shipments to new equipment, and year-to-year changes in new commercial sector floor space additions from *AEO2011,* DOE estimated shipments for new construction. (For the NOPR, DOE is using *AEO2013* projections of floor space additions. The *AEO2013* floor space additions by building type are shown in Table IV.28.) The combination of the replacement and new construction shipments yields total shipments. The final step was to distribute total sales to equipment classes by multiplying the total shipments by percentage shares by class. Table IV.29 shows the percentages represented by all equipment classes, both the primary classes modeled explicitly in all NOPR analyses as well as the secondary classes.

TABLE IV.27—BUSINESS TYPES INCLUDED IN SHIPMENTS ANALYSIS

Building type	Building type as percent of stock *(%)*
Health Care	9
Lodging	33
Foodservice	22
Retail	8
Education	7
Food Sales	16
Office	4
Total	100

TABLE IV.28—*AEO2013* FORECAST OF NEW BUILDING SQUARE FOOTAGE

Year	New construction						
	million ft²						
	Health care	Lodging	Foodservice	Retail	Education	Food sales	Office
2013	66	147	30	276	247	21	173
2018	67	164	50	424	208	35	409
2020	65	178	48	407	197	33	452
2025	63	181	48	442	169	33	392
2030	71	150	54	508	191	38	273
2035	73	207	56	522	228	39	412
2040	76	190	56	562	252	39	405
Annual Growth Factor, 2031–2040	2.4%	2.5%	2.4%	2.5%	1.7%	2.3%	2.1%

[53] Navigant Consulting, Inc. *Energy Savings Potential and R&D Opportunities for Commercial Refrigeration.* Final Report, submitted to the U.S. Department of Energy. September 23, 2009. Page 41.

TABLE IV.29—PERCENT OF SHIPPED UNITS OF AUTOMATIC COMMERCIAL ICE MAKERS

Equipment class	Percentage of shipments
IMH–W–Small–B	4.54
IMH–W–Med–B	2.90
IMH–W–Large–B	0.48
IMH–A–Small–B	27.08
IMH–A–Large–B	16.14
RCU–Small–B	5.43
RCU–RC/NC–Large–B	6.08
SCU–W–Small–B	0.68
SCU–W–Large–B	0.22
SCU–A–Small–B	13.85
SCU–A–Large–B	6.56
IMH–W–Small–C	0.68
IMH–W–Large–C	0.17
IMH–A–Small–C	3.53
IMH–A–Large–C	1.07
RCU–Small–C	0.83
RCU–Large–C	0.87
SCU–W–Small–C	0.15
SCU–W–Large–C	0.00
SCU–A–Small–C	8.75
SCU–A–Large–C	0.00
Total	100.00

Source: AHRI, 2010 Shipments data submitted to DOE as part of this rulemaking.

Comments related to shipment analysis received during the February 2012 preliminary analysis public meeting are listed below along with DOE's responses to the comments.

AHRI, in response to DOE's question about inconsistencies between AHRI and CIR data, indicated it has found discrepancies and that these discrepancies relate to the way manufacturers report to the Census Bureau. AHRI stated that some residential ice makers may be lumped into the Census Bureau data. AHRI stated that it is confident in its data and would trust it as compared to the Census Bureau data. (AHRI, Public Meeting Transcript, No. 42 at p. 155) AHRI commented that it believes the historical shipments numbers it provided to DOE are more consistent in terms of product definitions and other factors than the Census Bureau shipments. (AHRI, No. 49 at p. 6) In response to a question by NPCC, Manitowoc indicated that while the automatic commercial ice makers market was still a little below historical levels, it was recovered from 2009. Manitowoc stated the product mix calculated by DOE is a ''pretty good'' snapshot, but there are shifts over time between batch and continuous types. (Manitowoc, Public Meeting Transcript, No. 42 at p. 147) Howe recommended using the Census Bureau shipments data because it is more encompassing. (Howe, No. 51 at p. 4) Hoshizaki stated AHRI shipment data could be skewed by models not sold in AHRI model class or manufacturers that do not participate with AHRI, but more information is needed to evaluate this issue. (Hoshizaki, No. 53 at p. 2)

In response to AHRI's comments about the known consistency of the AHRI data versus the less-well-known consistency of the Census Bureau data, DOE elected to use the AHRI historical data for the DOE Reference Case projections. As noted by Howe and Hoshizaki, the Census Bureau data could reflect broader coverage of all manufacturers. Thus, DOE configured the NIA model such that consistent scenarios can be modeled with either AHRI or Census Bureau data. With respect to the Manitowoc comments, DOE appreciates that the product mix represents a good snapshot. With respect to changing the mix, DOE requests additional data concerning trends, in the absence of which, DOE will by necessity hold the product mix static in the forecast.

2. Forecasted Efficiency in the Base Case and Standards Cases

The method for estimating the market share distribution of efficiency levels is presented in section IV.G.10, and a detailed description can be found in chapter 10 of the NOPR TSD. To estimate efficiency trends in the standards cases, DOE uses a ''roll-up'' scenario in its standards rulemakings. Under the roll-up scenario, DOE assumes that equipment efficiencies in the base case that do not meet the standard level under consideration would ''roll up'' to the efficiency level that just meets the proposed standard level and equipment already being purchased at efficiencies at or above the standard level under consideration would be unaffected. Table IV.30 shows the shipment-weighted market shares by efficiency level in the base-case scenario.

TABLE IV.30—SHIPMENT-WEIGHTED MARKET SHARES BY EFFICIENCY LEVEL, BASE CASE

Equipment class	Market share by efficiency level						
	Level 1 (%)	Level 2 (%)	Level 3 (%)	Level 4 (%)	Level 5 (%)	Level 6 (%)	Level 7 (%)
IMH–W–Small–B	39.1	26.1	23.9	10.9	0.0	0.0	.....
IMH–W–Med–B	69.0	16.7	11.9	0.0	2.4	.....	.....
IMH–W–Large–B							
IMH–W–Large–B–1	71.4	0.0	4.8	23.8	.....	.....	.....
IMH–W–Large–B–2	33.3	50.0	0.0	16.7	.....	.....	.....
IMH–A–Small–B	37.0	31.5	25.9	5.6	0.0	0.0	0.0
IMH–A–Large–B							
IMH–A–Large–B–1	41.5	43.9	7.3	7.3	0.0	0.0	.....
IMH–A–Large–B–2	33.3	26.7	26.7	13.3	.....	.....	.....
RCU–Large–B							
RCU–Large–B–1	42.9	39.3	8.9	0.0	8.9	.....	.....
RCU–Large–B–2	27.3	45.5	9.1	0.0	18.2	.....	.....
SCU–W–Large–B	28.6	0.0	14.3	0.0	42.9	0.0	14.3
SCU–A–Small–B	17.1	40.0	5.7	11.4	14.3	11.4	0.0
SCU–A–Large–B	28.6	35.7	0.0	7.1	21.4	7.1	0.0
IMH–A–Small–C	22.9	22.9	14.3	8.6	17.1	2.9	11.4
IMH–A–Large–C	35.0	20.0	15.0	15.0	0.0	5.0	10.0
SCU–A–Small–C	26.7	20.0	16.7	13.3	3.3	20.0	.....

3. National Energy Savings

For each year in the forecast period, DOE calculates the NES for each TSL by multiplying the stock of equipment affected by the energy conservation standards by the estimated per-unit annual energy savings. DOE typically considers the impact of a rebound effect, introduced in the energy use analysis, in its calculation of NES for a given product. A rebound effect occurs when users operate higher efficiency equipment more frequently and/or for longer durations, thus offsetting estimated energy savings. When a rebound effect occurs, it is generally because the users of the equipment perceive it as less costly to use the equipment and elect to use it more intensively. In the case of automatic commercial ice makers, users of the equipment include restaurant wait staff, hotel guests, cafeteria patrons, or hospital staff using ice in the treatment of patients. Users of automatic commercial ice makers tend to have no perception of the cost of the ice, and rather are using the ice to serve a specific need. Given this, DOE believes there is no potential for a rebound effect. For the preliminary analysis, DOE used a rebound factor of 1, or no effect, for automatic commercial ice makers.

Inputs to the calculation of NES are annual unit energy consumption, shipments, equipment stock, and a site-to-source conversion factor.

The annual unit energy consumption is the site energy consumed by an automatic commercial ice maker unit in a given year. Using the efficiency of units at each efficiency level and the baseline efficiency distribution, DOE determined annual forecasted shipment-weighted average equipment efficiencies that, in turn, enabled determination of shipment-weighted annual energy consumption values.

The automatic commercial ice makers stock in a given year is the total number of automatic commercial ice makers shipped from earlier years (up to 12 years earlier) that remain in use in that year. The NES spreadsheet model keeps track of the total units shipped each year. For purposes of the NES and NPV analyses in the NOPR analysis, DOE assumed that, based on an 8.5-year average equipment lifetimes, approximately 12 percent of the existing automatic commercial ice makers are retired and replaced in each year. DOE assumes that, for units shipped in 2047, any units still remaining at the end of 2055 will be replaced.

DOE uses a multiplicative factor called ''site-to-source conversion factor'' to convert site energy consumption (at the commercial building) into primary or source energy consumption (the energy at the energy generation site required to convert and deliver the site energy). These site-to-source conversion factors account for the energy used at power plants to generate electricity and losses in transmission and distribution, as well as for natural gas losses from pipeline leakage and energy used for pumping. For electricity, the conversion factors vary over time due to projected changes in generation sources (that is, the power plant types projected to provide electricity to the country). The factors that DOE developed are marginal values, which represent the response of the system to an incremental decrease in consumption associated with amended energy conservation standards.

In the preliminary analysis, DOE used annual site-to-source conversion factors based on the version of the National Energy Modeling System (NEMS) that corresponds to *AEO2008*.[54] For today's NOPR, DOE updated its conversion factors based on the U.S. energy sector modeling using the NEMS Building Technologies (NEMS–BT) version that corresponds to *AEO2013* and which provides national energy forecasts through 2040. Within the results of NEMS–BT model runs performed by DOE, a site-to-source ratio for commercial refrigeration was developed. The site-to-source ratio was extended beyond 2040 by using growth rates calculated at 5-year intervals to extrapolate the trend to 2045, after which it was held constant through the end of the analysis period (30-years plus the life of equipment).

DOE has historically presented NES in terms of primary energy savings. In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Science, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011) While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is a more appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). DOE received one comment, which was supportive of the use of NEMS for DOE's FFC analysis.[55]

The approach used for today's NOPR, and the FFC multipliers that were applied are described in appendix 10D of the NOPR TSD. NES results are presented in both primary and in terms of FFC savings; the savings by TSL are summarized in terms of FFC savings in section V.B.3.

4. Net Present Value of Customer Benefit

The inputs for determining the NPV of the total costs and benefits experienced by customers of the automatic commercial ice makers are: (1) total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor. DOE calculated net national savings for each year as the difference in installation and operating costs between the base-case scenario and standards-case scenarios. DOE calculated operating cost savings over the life of each piece of equipment shipped in the forecast period.

DOE multiplied monetary values in future years by the discount factor to determine the present value of costs and savings. DOE estimated national impacts with both a 3-percent and a 7-percent real discount rate as the average real rate of return on private investment in the U.S. economy. These discount rates are used in accordance with the Office of Management and Budget (OMB) guidance to Federal agencies on the development of regulatory analysis (OMB Circular A–4, September 17, 2003), and section E, ''Identifying and Measuring Benefits and Costs,'' therein. DOE defined the present year as 2013 for the NOPR analysis. 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 ''societal rate of time preference,'' which is the rate at which society discounts future consumption flows to their present.

As discussed in IV.G.1, DOE included a projection of price trends in the

[54] In the past for preliminary analysis estimates, DOE typically did not perform analyses using NEMS. Rather, DOE relied on existing estimates considered appropriate for the analysis. The site-to-source values DOE considered most appropriate were those used in the prior 2009 commercial refrigeration equipment rulemaking final rule.

[55] Docket ID: EERE–2010–BT–NOA0028, comment by Kirk Lundblade.

preliminary analysis NIA. For the NOPR, DOE reviewed and updated the analysis with the result that the projected reference case downward trend in prices is quite modest. For the NOPR, DOE also developed high and low case price trend projections, as discussed in a NOPR TSD appendix to chapter 10.

I. Customer Subgroup Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (*i.e.,* subgroups) of customers, such as different types of businesses that may be disproportionately affected. Based on the data available to DOE, automatic commercial ice maker ownership in three building types represent over 70 percent of the market: food sales, foodservice, and hotels. Based on data from the 2007 U.S. Economic Census and size standards set by the U.S. Small Business Administration (SBA), DOE determined that a majority of food sales, foodservice and lodging firms fall under the definition of small businesses. Small businesses typically face a higher cost of capital. In general, the lower the cost of electricity and higher the cost of capital, the more likely it is that an entity would be disadvantaged by the requirement to purchase higher efficiency equipment. Chapter 8 of the NOPR TSD presents the electricity price by business type and discount rates by building types, respectively, while chapter 11 discusses these topics as they specifically relate to small businesses.

Comparing the foodservice, food sales, and lodging categories, foodservice faces the highest energy price, with food sales and lodging facing lower and nearly the same energy prices. Lodging faces the highest cost of capital. Foodservice faces a higher cost of capital than food sales. Given the cost of capital disparity, lodging was selected for LCC subgroup analysis. With foodservice facing a higher cost of capital, it was selected for subgroup analysis because the higher cost of capital should lead foodservice customers to value first cost more and future electricity savings less than would be the case for food sales customers.

At the February 2012 preliminary analysis public meeting, DOE asked for input on the LCC subgroup analysis, and in particular, about appropriate groups for analysis. Manitowoc recommended that DOE look at small businesses, such as franchise operations and independent proprietor-run establishments. Manitowoc added that while there are institutional sectors with longer windows, there are others—''mom and pops''—that represent a large part of the market and which may be unfairly impacted by new standards because of their short payback windows and cash constraints. Manitowoc also indicated it is not just restaurants, it is hotels operated by franchisees and in some cases even hotel chains. (Manitowoc, Public Meeting Transcript, No. 42 at p. 169)

DOE estimated the impact on the identified customer subgroups using the LCC spreadsheet model. The standard LCC and PBP analyses (described in section IV.G) include various types of businesses that use automatic commercial ice makers. For the LCC subgroup analysis, it was assumed that the subgroups analyzed do not have access to national purchasing accounts or two major capital markets thereby making the discount rates higher for these subgroups. Details of the data used for LCC subgroup analysis and results are presented in chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the impacts of amended energy conservation standards on manufacturers of automatic commercial ice makers. 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, in particular, small businesses.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry weighted average cost of capital, and the impact to domestic manufacturing employment. The model estimates the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a base case and the various TSLs in the standards case. To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on small business manufacturers. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the automatic commercial ice maker industry. This included a top-down cost analysis of automatic commercial ice maker manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the automatic commercial ice maker industry, including company Securities and Exchange Commission (SEC) 10–K filings, corporate annual reports, the U.S. Census Bureau's Economic Census, and reports from Dunn & Bradstreet.

In Phase 2 of the MIA, DOE prepared a framework industry cash flow analysis to quantify the impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the effective date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of automatic commercial ice makers in order to

develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with a representative cross-section of manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.4 for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small manufacturers, low volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average.

DOE identified one subgroup, small manufacturers, for which average cost assumptions may not hold. DOE applied the small business size standards published by the SBA to determine whether a company is considered a small business. 65 FR 30840, May 15, 2000, as amended at 67 FR 52602, Aug. 13, 2002; 74 FR 46313, Sept. 9, 2009. To be categorized as a small business under North American Industry Classification System (NAICS) 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes commercial ice maker manufacturing, a manufacturer and its affiliates may employ a maximum of 750 employees. The 750-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified seven manufacturers of automatic commercial ice makers that qualify as small businesses. The automatic commercial ice maker small manufacturer subgroup is discussed in chapter 12 of the NOPR TSD and in section VI.B.1 of this rulemaking.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the changes in industry cash flows resulting from new or amended energy conservation standards. The GRIM uses manufacturer costs, markups, shipments, and industry financial information to arrive at a series of base-case annual cash flows absent new or amended standards, beginning with the present year, 2013, and continuing through 2047. The GRIM then models changes in costs, investments, shipments, and manufacturer margins that may result from new or amended energy conservation standards and compares these results against those in the base-case forecast of annual cash flows. The primary quantitative output of the GRIM is the INPV, which DOE calculates by summing the stream of annual discounted cash flows over the full analysis period. For manufacturers of automatic commercial ice makers, DOE used a real discount rate of 9.2 percent, the weighted average cost of capital as derived from industry financials. DOE then modified this figure based on feedback received during confidential interviews with manufacturers.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the base case and the various TSLs. The difference in INPV between the base case and a standards case represents the financial impact of the amended standard on manufacturers at that particular TSL. As discussed previously, DOE collected the necessary information to develop key GRIM inputs from a number of sources, including publicly available data and interviews with manufacturers (described in the next section). The GRIM results are shown in section V.B.2.a. Additional details about the GRIM can be found in chapter 12 of the NOPR TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex and typically more costly components. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making product cost data key GRIM inputs for DOE's analysis.

For each efficiency level of each equipment class that was directly analyzed, DOE used the MPCs developed in the engineering analysis, as described in section IV.A.2 and further detailed in chapter 5 of the NOPR TSD. For equipment classes that were indirectly analyzed, DOE used a composite of MPCs from similar equipment classes, substitute component costs, and design options to develop an MPC for each efficiency level. For equipment classes that had multiple units analyzed, DOE used a weighted average MPC based on the relative shipments of products at each efficiency level as the input for the GRIM. Additionally, DOE used information from its teardown analysis, described in section IV.D, to disaggregate the MPCs into material and labor costs. These cost breakdowns and equipment markups were validated with manufacturers during manufacturer interviews.

Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis from 2013, the base year, to 2047, the end of the analysis period. See chapter 9 of the NOPR TSD for additional details.

Product and Capital Conversion Costs

Amended energy conservation standards will cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs and (2) capital conversion costs. Product conversion costs include investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new or amended energy conservation standards. Capital conversion costs include investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled.

Stranded Assets

If new or amended energy conservation standards require investment in new manufacturing capital, there also exists the possibility that they will render existing manufacturing capital obsolete. In the case that this obsolete manufacturing capital is not fully depreciated at the time new or amended standards go into effect, this would result in the stranding of these assets, and would necessitate the write-down of their residual un-depreciated value.

DOE used multiple sources of data to evaluate the level of product and capital

conversion costs and stranded assets manufacturers would likely face to comply with new or amended energy conservation standards. DOE used manufacturer interviews to gather data on the level of investment anticipated at each proposed efficiency level and validated these assumptions using estimates of capital requirements derived from the product teardown analysis and engineering model described in section IV.D. These estimates were then aggregated and scaled using information gained from industry product databases to derive total industry estimates of product and capital conversion costs and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year the final rule is published and the year by which manufacturers must comply with the new or amended standards. The investment figures used in the GRIM can be found in section V.B.2.a of this notice. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

Markup Scenarios

As discussed in section IV.D, MSPs include direct manufacturing production costs (*i.e.,* labor, material, overhead, and depreciation estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of earnings before interest and taxes (EBIT) markup scenario. These scenarios lead to different markups values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single, uniform ''gross margin percentage'' markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly available financial information for manufacturers of automatic commercial ice makers and comments from manufacturer interviews, DOE assumed the industry average markup on production costs to be 1.25. Because this markup scenario assumes that manufacturers would be able to maintain their gross margin percentage as production costs increase in response to an amended energy conservation standard, it represents a lower bound of industry impacts (higher industry profitability) under an amended energy conservation standard.

In the preservation of EBIT markup scenario, manufacturer markups are calibrated so that EBIT in the year after the compliance date of the amended energy conservation standard is the same as in the base case. Under this scenario, as the cost of production goes up, manufacturers are generally required to reduce the markups on their minimally compliant products to maintain a cost competitive offering. The implicit assumption behind this scenario is that the industry can only maintain EBIT in absolute dollars after compliance with the amended standard is required. Therefore, operating margin (as a percentage) shrinks in the standards cases. This markup scenario represents an upper bound of industry impacts (lower profitability) under an amended energy conservation standard.

3. Discussion of Comments

In response to the February 2012 preliminary analysis public meeting, interested parties commented on the assumptions and results of the preliminary analysis TSD. Oral and written comments addressed several topics, including the impact to suppliers and the distribution channel, the importance of the ENERGYSTAR program, cumulative regulatory burden, and the impact to small manufacturers.

a. Impact to Suppliers, Distributors, Dealers, and Contractors

AHRI commented that DOE must perform analyses to assess the impact of the rule on component suppliers, distributors, dealers, and contractors. Where the MIA serves to assess the impact of amended energy conservation standards on manufacturers of automatic commercial ice makers; any impact on distributors, dealers, and contractors falls outside the scope of this analysis.

Impacts on component suppliers might arise if manufacturers switched to more-efficient components, or if there was a substantial reduction of orders following new or amended standards. In public comments, manufacturers expressed that given their low production volumes, the automatic commercial ice maker manufacturing industry has little influence over component suppliers relative to other commercial refrigeration equipment industries. It follows that energy conservation standards for automatic commercial ice makers would have little impact on component suppliers given their marginal contribution to overall commercial refrigeration component demand.

b. ENERGY STAR

Manitowoc commented that it is a very strong supporter of ENERGY STAR and that certification is very important to its customers because of the potential for utility rebates, Leadership in Energy and Environmental Design (LEED) certification, and other reasons. Manitowoc expressed concern that, if efficiency standards were raised to the max-tech level, there would be no more room for an ENERGY STAR category, which would be disruptive to the industry.

DOE acknowledges the importance of the ENERGY STAR program and of understanding its interaction with energy efficiency standards. However, EPCA requires DOE to establish energy conservation standards at the maximum level that is technically feasible and economically justified. DOE has found, over time, with other products, as the standard level is increased, manufacturers' research results in energy efficiency improvements that are regarded by the ENERGY STAR program. As such, any standard level below the max-tech level continues to leave room for ENERGY STAR rebate programs.

c. Cumulative Regulatory Burden

AHRI commented on the cumulative regulatory burden associated with DOE efficiency standards. AHRI indicated that several legislative and regulatory activities should be considered, including legislation intended to reduce lead in drinking water and climate change bills that may be considered by Congress. (AHRI, No. 49 at p. 4)

DOE takes into account the cumulative cost of multiple Federal regulations on manufacturers in the cumulative regulatory burden section of its analysis, which can be found in section V.B.2.e of this notice. DOE does not analyze the quantitative impacts of standards that have not yet been finalized. Similarly, DOE does not analyze the impacts of potential climate change bills because any impacts would

be speculative in the absence of final legislation.

AHRI noted that California has regulations to limit GHGs and the measures established by the California Air Resources Board (CARB) to reduce global warming will reduce the use of refrigerants such as HFCs. CARB is currently limiting the in-State use of refrigerants considered to have high global warming potential (GWP) in non-residential refrigeration systems through its Refrigerant Management Program that became effective on January 1, 2011.[56] According to this new regulation, facilities with refrigeration systems that have a refrigerant capacity exceeding 50 lb must repair leaks within 14 days of detection, maintain on-site records of all leak repairs, and keep receipts of all refrigerant purchases. The regulation applies to any person or company that installs, services, or disposes of appliances with high-GWP refrigerants. Refrigeration systems with a refrigerant capacity exceeding 50 lb typically belong to food retail operations with remote condensing racks that store refrigerant serving multiple commercial refrigeration and ice-making units within a business. However, automatic commercial ice makers in food retail establishments are usually installed and serviced by refrigeration contractors, not manufacturers. As a result, although these CARB regulations apply to refrigeration technicians and owners of facilities with refrigeration systems, they are unlikely to represent a regulatory burden for manufacturers of automatic commercial ice makers.

The discussion of cumulative regulatory burden on manufacturers of automatic commercial ice makers is detailed further in chapter 12 of the NOPR TSD.

d. Small Manufacturers

Howe observed that most high-capacity ice makers are made by small manufacturers, and consequently, setting higher efficiency standards for high-capacity equipment may be discriminatory against small manufacturers. (Howe, No. 51 at p. 2)

DOE agrees that amended standards may have disproportionate impacts on smaller manufacturers. To make this determination, the DOE conducts an analysis of impacts on certain manufacturer subgroups including small businesses to assess if any impacts prove to be disproportionate. The results of this analysis are described further in section VI.B of this notice and detailed in chapter 12 of the NOPR TSD.

[56] See *www.arb.ca.gov/cc/reftrack/reftrackrule.html.*

4. Manufacturer Interviews

To inform the MIA, DOE interviewed manufacturers with an estimated combined market share of 95 percent. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the automatic commercial ice maker industry. These confidential interviews provided information that DOE used to evaluate the impacts of amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

During the manufacturer interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. The following sections describe the most significant issues identified by manufacturers. DOE also includes additional concerns in chapter 12 of the NOPR TSD.

a. Price Sensitivity

All manufacturers interviewed characterized the market for automatic commercial ice makers as extremely price sensitive. They hold the position that new and amended standards will result in decreased profit margins as they will be unable to pass through costs relating to standards compliance. They noted that this will be particularly troublesome for lower capacity equipment classes (Small SCU and Small IMH), which are sold primarily to smaller restaurants and food service establishments with limited access to capital. Additionally, they noted that distributors tend to be individual proprietors or small franchises with limited opportunities to extend financing to their customers. Manufacturers went on to report that while energy efficiency is important, it is not a feature for which customers would pay a premium.

One manufacturer also noted that replacement parts represented 70 percent of sales, and while sales of parts had increased since 2009, unit sales had decreased, indicating that customers were holding onto units longer. The ability to extend the life of a unit through repairs and refurbishment presents a further economic challenge to manufacturers facing energy efficiency standards.

b. Enforcement

Manufacturers characterized the automatic commercial ice maker market as a niche market with a high degree of competition. The recent entrance of foreign manufacturers has led to a further tightening of price competition due to the lower labor costs of these foreign manufacturers. Several domestic manufacturers expressed concern about the enforcement of an amended energy efficiency standard for automatic commercial ice makers produced overseas. Manufacturers believe that insufficient enforcement will lead to market distortions, as companies that make the necessary investments to meet amended standards would be at a distinct pricing disadvantage to unscrupulous competitors, often times foreign manufacturers, that do not fully comply. The manufacturers requested that DOE take the enforcement action necessary to maintain a level playing field and to eliminate non-compliant products from the market.

c. Reliability Impacts

Some manufacturers expressed concerns that future energy conservation standards would have an adverse impact on the reliability of their products. One manufacturer stated that any time new components or designs are introduced, that there is an increase in service calls and the mean time between failures drops as they work out the issues. This manufacturer went on to emphasize that reliability is the most important feature of their products.

d. Impact on Innovation

Several manufacturers expressed concerns over the imbalance of internal engineering resources brought about by the regular revision and introduction of energy conservation standards. As energy use has become increasingly regulated, manufacturers have had to shift engineering and support resources away from other initiatives, adversely affecting product innovation outside of energy efficiency. One manufacturer reported that a previous round of standards required nearly all of the company's engineering resources for between 1 and 2 years. Where the R&D effort required for compliance is intermittent, innovation is impacted without adding to overall employment. DOE requests additional comment on the intermittency of R&D efforts directed at compliance with energy conservation standards and its impact on other research and development resources.

K. Emissions Analysis

In the emissions analysis, DOE estimates the reduction in power sector emissions of CO_2, NO_X, SO_2, and Hg from potential energy conservation standards for automatic commercial ice makers. In addition, DOE estimates 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 full-fuel-cycle (FFC). In accordance with DOE's FFC Statement of Policy (76 FR 51282 (Aug. 18, 2011)), as amended at 77 FR 49701 (Aug. 17, 2012), the FFC analysis includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as GHGs.

DOE conducted the emissions analysis using emissions factors that were derived from data in *AEO2013,* supplemented by data from other sources. 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.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For CH_4 and N_2O, DOE also presents results in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying the physical units by the gas' global warming potential (GWP) over a 100 year time horizon. Based on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, DOE used GWP values of 25 for CH_4 and 298 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. *AEO2013* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of December 31, 2012.

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 the District of Columbia (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)), which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to U.S. Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit but it remained in effect. 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). On July 6, 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. See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The court ordered EPA to continue administering CAIR. The *AEO2013* emissions factors used for today's NOPR assume that CAIR remains a binding regulation through 2040.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2015, however, SO_2 emissions will fall 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. *AEO2013* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2015. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, NEMS shows a reduction in SO_2 emissions when electricity demand decreases (*e.g.,* as a result of energy efficiency standards). 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 needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that efficiency standards will reduce SO_2 emissions in 2015 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia. 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 today's NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2013,* which incorporates the MATS.

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 similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment 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 rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the 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 carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, 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 that have small, or ''marginal,'' impacts on cumulative global emissions. 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 carbon dioxide (CO_2) emissions, the analyst faces a number of serious challenges. A report from the National Research Council [57] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (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 serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Most Federal regulatory actions can be expected to have marginal impacts on global emissions. For such policies, 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 value appropriate for that year. The net present value 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. This approach assumes that the marginal damages from increased emissions are constant for small departures from the baseline emissions path, an approximation that is reasonable for policies that have effects on emissions that are small relative to cumulative global carbon dioxide emissions. For policies that have a large (non-marginal) impact on global cumulative emissions, there is a separate question of whether the SCC is an appropriate tool for calculating the benefits of reduced emissions. This concern is not applicable to this notice, however.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change 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 consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

Economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. The model year 2011 Corporate Average Fuel Economy final rule, the U.S. Department of Transportation (DOT) used both a ''domestic'' SCC value of $2 per metric ton of CO_2 and a ''global'' SCC value of $33 per metric ton of CO_2 for 2007 emission reductions (in 2007$), increasing both values at 2.4 percent per year. DOT also included a sensitivity analysis at $80 per metric ton of CO_2.[58] A 2008 regulation proposed by DOT assumed a domestic SCC value of $7 per metric ton of CO_2 (in 2006$) for 2011 emission reductions (with a range of $0–$14 for sensitivity analysis), also increasing at 2.4 percent per year.[59] A regulation for packaged terminal air conditioners and packaged terminal heat pumps finalized by DOE in 2008 used a domestic SCC range of $0 to $20 per metric ton CO_2 for 2007 emission reductions (in 2007$). 73 FR 58772, 58814 (Oct. 7, 2008) In addition, EPA's 2008 Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act identified what it described as ''very preliminary'' SCC estimates subject to revision. 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per metric ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ for 2007 emissions).

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 agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to 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

Since 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

[57] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC (2009).

[58] See *Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011,* 74 FR 14196 (March 30, 2009) (Final Rule); Final Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–90 (Oct. 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*).

[59] See *Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* 73 FR 24352 (May 2, 2008) (Proposed Rule); Draft Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–58 (June 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*)

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. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model 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, is 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, although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.31 presents the values in the 2010 interagency group report,[60] which is reproduced in appendix 14–A of the NOPR TSD.

TABLE IV.31—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007 dollars per metric ton]

	Discount rate (%)			
	5	3	2.5	3
	Average	Average	Average	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 today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[61] Table IV.32 shows the updated sets of SCC estimates in five 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.

TABLE IV.32—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[2007 dollars per metric ton CO_2]

Year	Discount rate (%)			
	5	3	2.5	3
	Average	Average	Average	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

[60] *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. <*www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.*>

[61] *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. <*http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*>

TABLE IV.32—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050—Continued

[2007 dollars per metric ton CO_2]

Year	Discount rate (%)			
	5	3	2.5	3
	Average	Average	Average	95th percentile
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 since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above 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 concerns and problems that should be 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 2012$ using the Gross Domestic Product (GDP) price deflator. For each of the four case of SCC values, the values for emissions in 2015 were $11.8, $39.7, $61.2, and $117.0 per metric ton avoided (values expressed in 2012$). 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

As noted above, DOE has taken into account how new or amended energy conservation standards would reduce NO_X emissions in those 22 States not affected by emission caps. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $468 to $4,809 per ton (2012$).[62] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,639 per short ton (in 2012$), 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. It has not included monetization in the current analysis.

M. Utility Impact Analysis

In the utility impact analysis, DOE analyzes the changes in electric installed capacity and generation that result for each TSL. The utility impact analysis uses a variant of NEMS,[63] which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. DOE uses a variant of this model, referred to as NEMS–BT,[64] to account for selected utility impacts of new or amended energy conservation standards. DOE's analysis consists of a comparison between model results for the most recent *AEO* Reference Case and for cases in which energy use is decremented to reflect the impact of potential standards. The energy savings inputs associated with each TSL come from the NIA. Chapter 15 of the NOPR TSD describes the utility impact analysis.

N. Employment Impact Analysis

Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy due to: (1) reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased customer spending on the purchase of new products; 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 Labor Statistics (BLS). 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.[65] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less

[62] For additional information, refer to 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,* Washington, DC.

[63] 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 2003,* DOE/EIA–0581 (2003), March, 2003.

[64] DOE/EIA approves use of the name ''NEMS'' to describe only an official version of the model without any modification to code or data. Because this analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, DOE refers to it by the name ''NEMS–BT'' (''BT'' is DOE's Building Technologies Program, under whose aegis this work has been performed).

[65] *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).

labor-intensive than other sectors. Energy conservation standards have the effect of reducing customer utility bills. Because reduced customer 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 may increase because of shifts in economic activity resulting from amended energy conservation standards for automatic commercial ice makers.

For the amended standard levels considered in today's NOPR, 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).[66] 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 the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 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 the NOPR, DOE used ImSET only to estimate short-term (through 2022) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

At the February 2012 preliminary analysis public meeting, NPCC inquired whether the money saved from low water consumption will be moved into the employment impact analysis along with the money saved from lower energy consumption. (NPCC, No. 42 at pp. 164 and 165) In response, DOE notes that all changes in operations and maintenance costs, including water costs, are captured in the employment analysis.

For more details on the employment impact analysis and its results, see chapter 16 of the NOPR TSD and section V.B.3.d of this notice.

O. Regulatory Impact Analysis

DOE prepared a regulatory impact analysis (RIA) for this rulemaking, which is described in chapter 17 of the NOPR TSD. The RIA is subject to review by OIRA in the OMB. The RIA consists of (1) a statement of the problem addressed by this regulation and the mandate for Government action; (2) a description and analysis of policy alternatives to this regulation; (3) a qualitative review of the potential impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

The RIA assesses the effects of feasible policy alternatives to amended automatic commercial ice makers standards and provides a comparison of the impacts of the alternatives. DOE evaluated the alternatives in terms of their ability to achieve significant energy savings at reasonable cost, and compared them to the effectiveness of the proposed rule.

DOE identified the following major policy alternatives for achieving increased automatic commercial ice makers efficiency:

- No new regulatory action
- commercial customer tax credits
- commercial customer rebates
- voluntary energy efficiency targets
- bulk government purchases
- early replacement

DOE qualitatively evaluated each alternative's ability to achieve significant energy savings at reasonable cost and compared it to the effectiveness of the proposed rule. DOE assumed that each alternative policy would induce commercial customers to voluntarily purchase at least some higher efficiency equipment at any of the TSLs. In contrast to a standard at one of the TSLs, the adoption rate of the alternative non-regulatory policy cases may not be 100 percent, which would result in lower energy savings than a standard. The following paragraphs discuss each policy alternative. (See chapter 17 of the NOPR TSD for further details.)

No new regulatory action: The case in which no regulatory action is taken for automatic commercial ice makers constitutes the base-case (or no action) scenario. By definition, no new regulatory action yields zero energy savings and an NPV of zero dollars.

Commercial customer tax credits: Customer tax credits are considered a viable non-regulatory market transformation program. From a customer perspective, the most important difference between rebate and tax credit programs is that a rebate can be obtained quickly, whereas receipt of tax credits is delayed until income taxes are filed or a tax refund is provided by the Internal Revenue Service (IRS). From a societal perspective, tax credits (like rebates) do not change the installed cost of the equipment, but rather transfer a portion of the cost from the customer to taxpayers as a whole. DOE, therefore, assumed that equipment costs in the customer tax credits scenario were identical to the NIA base case. The change in the NES and NPV is a result of the change in the efficiency distributions that results from lowering the prices of higher efficiency equipment.

Commercial customer rebates: Customer rebates cover a portion of the difference in incremental product price between products meeting baseline efficacy levels and those meeting higher efficiency levels, resulting in a higher percentage of customers purchasing more-efficacious models and decreased aggregated energy use compared to the base case. Although the rebate program reduces the total installed cost to the customer, it is financed by tax revenues. Therefore, from a societal perspective, the installed cost at any efficiency level does *not* change with the rebate program; rather, part of the cost is transferred from the customer to taxpayers as a whole. Consequently, DOE assumed that equipment costs in the rebates scenario were identical to the NIA base case. The change in the NES and NPV is a result of the change in the efficiency distributions that results as a consequence of lowering the prices of higher efficiency equipment.

Voluntary energy efficiency targets: While it is possible that voluntary programs for equipment would be effective, DOE lacks a quantitative basis to determine how effective such a program might be. As noted previously, broader economic and social considerations are in play than simple economic return to the equipment purchaser. DOE lacks the data necessary to quantitatively project the degree to which voluntary programs for more expensive, higher efficiency equipment would modify the market.

Bulk government purchases and early replacement incentive programs: DOE also considered, but did not analyze, the potential of bulk government purchases

[66] Scott, M.J., O.V. Livingston, P.J. Balducci, J.M. Roop, and R.W. Schultz. *ImSET 3.1: Impact of Sector Energy Technologies.* 2009. Pacific Northwest National Laboratory, Richland, WA. Report No. PNNL–18412. <*www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*>

and early replacement incentive programs as alternatives to the proposed standards. Bulk government purchases would have a very limited impact on improving the overall market efficiency of automatic commercial ice makers because they would be a small part of the total equipment sold in the market. In the case of replacement incentives, several policy options exist to promote early replacement, including a direct national program of customer incentives, incentives paid to utilities to promote an early replacement program, market promotions through equipment manufacturers, and replacement of government-owned equipment. In considering early replacements, DOE estimates that the energy savings realized through a one-time early replacement of existing stock equipment does not result in energy savings commensurate to the cost to administer the program. Consequently, DOE did not analyze this option in detail.

V. Analytical Results

A. Trial Standard Levels

1. Trial Standard Level Formulation Process and Criteria

DOE selected between four and seven efficiency levels for all equipment classes for analysis. For all equipment classes, the first efficiency level is the baseline efficiency level. Based on the results of the LCC analysis and NIA, DOE selected five TSLs above the baseline level for each equipment class for the NOPR stage of this rulemaking. Table V.1 shows the mapping between TSLs and efficiency levels.

TSL 5 was selected at the max-tech level for all equipment classes.

TSL 4 was chosen as an intermediate level between the max-tech level and the maximum customer NPV level, subject to the requirement that the TSL 4 NPV must be positive. ''Customer NPV'' is the NPV of future savings obtained from the NIA. It provides a measure of the benefits only to the customers of the automatic commercial ice makers, and does not account for the net benefits to the Nation. The net benefits to the Nation also include monetized values of emissions reductions in addition to the customer NPV. Where a sufficient number of efficiency levels allow it, TSL 4 is set at least one level below max-tech and one level above the efficiency level with the highest NPV. In one case, the TSL 4 efficiency level is the maximum NPV level because the next higher level had a negative NPV. In cases where the maximum NPV efficiency level is the penultimate efficiency level and the max-tech level showed a positive NPV the TSL 4 efficiency level is also the max-tech level.

TSL 3 was chosen to represent the group of efficiency levels with the highest customer NPV at a 7-percent discount rate.

TSL 2 was selected to provide intermediate efficiency levels that fill the gap between the TSLs 1 and 3. Note that with the number of efficiency levels available for each equipment class, there is often overlap between TSL levels. Thus, TSL 2 includes levels that overlap with both TSLs 1 and 3. The intent of TSL 2 is to provide an intermediate level to preclude big jumps in efficiency between TSLs 1 and 3.

TSL 1 was set equal to efficiency level 2. In the analysis, efficiency level 2 was set equivalent to ENERGY STAR for products rated by ENERGY STAR, and an equivalent efficiency improvement for other equipment classes.

TABLE V.1—MAPPING BETWEEN TSLS AND EFFICIENCY LEVELS *

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	Level 2	Level 3	Level 5	Level 5	Level 6
IMH–W–Med–B	Level 2	Level 2	Level 3	Level 4	Level 5
IMH–W–Large–B †					
IMH–W–Large–B1	Level 2	Level 2	Level 2	Level 3	Level 4
IMH–W–Large–B2	Level 2	Level 2	Level 2	Level 3	Level 4
IMH–A–Small–B	Level 2	Level 3	Level 5	Level 6	Level 7
IMH–A–Large–B †					
IMH–A–Large–B1	Level 2	Level 3	Level 5	Level 6	Level 6
IMH–A–Large–B2	Level 2	Level 2	Level 3	Level 4	Level 4
RCU–Large–B †					
RCU–Large–B1	Level 2	Level 2	Level 3	Level 4	Level 5
RCU–Large–B2	Level 2	Level 2	Level 3	Level 4	Level 5
SCU–W–Large–B	Level 2	Level 3	Level 5	Level 6	Level 7
SCU–A–Small–B	Level 2	Level 4	Level 6	Level 7	Level 7
SCU–A–Large–B	Level 2	Level 4	Level 6	Level 7	Level 7
IMH–A–Small–C	Level 2	Level 3	Level 4	Level 5	Level 7
IMH–A–Large–C	Level 2	Level 3	Level 5	Level 6	Level 7
SCU–A–Small–C	Level 2	Level 3	Level 4	Level 4	Level 6

* For three large equipment classes—IMH–W–Large–B, IMH–A–Large–B and RCU–Large–B—because the harvest capacity range is so wide DOE analyzed two typical models to ensure models at the low and the higher portions of the applicable range were accurately modeled. The smaller of the two is noted as B1 and the larger as B2.

† DOE analyzed impacts for the B1 and B2 typical units and aggregated impacts to the equipment class level.

Table V.2 illustrates the efficiency improvements incorporated in all efficiency levels.

TABLE V.2—PERCENTAGE EFFICIENCY IMPROVEMENT FROM BASELINE BY TSL *

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)
IMH–W–Small–B	10.0	15.0	25.0	25.0	29.4

TABLE V.2—PERCENTAGE EFFICIENCY IMPROVEMENT FROM BASELINE BY TSL *—Continued

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)
IMH–W–Med–B	10.0	10.0	15.0	20.0	21.3
IMH–W–Large–B	10.0	10.0	10.0	15.0	16.4
IMH–W–Large–B1	10.0	10.0	10.0	15.0	16.7
IMH–W–Large–B2	10.0	10.0	10.0	15.0	15.5
IMH–A–Small–B	10.0	15.0	25.0	30.0	31.3
IMH–A–Large–B	10.0	14.2	23.4	28.0	28.0
IMH–A–Large–B1	10.0	15.0	25.0	29.4	29.4
IMH–A–Large–B2	10.0	10.0	15.0	20.0	20.0
RCU–Large–B	9.0	9.0	15.0	20.0	20.6
RCU–Large–B1	9.0	9.0	15.0	20.0	20.6
RCU–Large–B2	9.0	9.0	15.0	20.0	20.5
SCU–W–Large–B	7.0	15.0	25.0	30.0	30.2
SCU–A–Small–B	7.0	20.0	30.0	39.3	39.3
SCU–A–Large–B	7.0	20.0	30.0	34.9	34.9
IMH–A–Small–C	10.0	15.0	20.0	25.0	31.0
IMH–A–Large–C	10.0	15.0	25.0	30.0	30.2
SCU–A–Small–C	7.0	15.0	20.0	20.0	28.2

* Percentage improvements for IMH–W–Large–B, IMH–A–Large–B and RCU–Large–B are a weighted average of the B1 and B2 units, using weights provided in TSD chapter 7.

Table V.3 illustrates the design options associated with each TSL level, for each analyzed product class. The design options are discussed in Section IV.D.3 of today's NOPR, and in Chapter 5 of the NOPR TSD.

TABLE V.3—DESIGN OPTIONS FOR ANALYZED PRODUCTS CLASSES AT EACH TSL

Equipment class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Design Options for Each TSL (options are cumulative—TSL5 includes all preceding options)						
IMH–W–Small–B	No BW Fill, PSC PM.	Increase Comp EER, Increase Cond.	Same as previous.	Increase Cond, BW Fill.	BW Fill, Increase Evap, ECM PM.	ECM PM, DWHX.
IMH–W–Med–B	BW Fill, PSC PM.	Increase Comp EER.	Same as previous.	Increase Comp EER, Increase Cond.	Increase Comp EER, ECM PM, DWHX.	DWHX.
IMH–W–Large–B1	BW Fill, PSC PM.	Increase Comp EER, Increase Cond.	Same as previous.	Same as previous.	Increase Cond, ECM PM, DWHX.	DWHX.
IMH–W–Large–B2	BW Fill, PSC PM.	Increase Comp EER, Increase Cond.	Same as previous.	Same as previous.	ECM PM, DWHX.	DWHX.
IMH–A–Small–B	BW Fill, PSC PM, SPM FM.	Increase Comp EER, Increase Cond, Increase Evap.	Increase Evap	Increase Evap, PSC FM, ECM FM, Increase Cond.	Increase Cond, ECM PM, DWHX.	DWHX.
IMH–A–Large–B1	BW Fill, PSC PM, SPM FM.	PSC FM, Comp EER.	Increase Comp EER.	Increase Comp EER, BW Fill, ECM PM, ECM FM, Increase Cond.	Increase Cond, DWHX.	DWHX.
IMH–A–Large–B2	BW Fill, PSC PM, SPM FM.	Increase Comp EER, PSC FM.	Same as previous.	PSC FM, Increase Cond.	ECM FM, ECM PM, DWHX.	ECM FM, ECM PM, DWHX.
RCU–Large–B1	BW Fill, PSC PM, PSC FM.	Increase Comp EER.	Same as previous.	Increase Comp EER, Increase Cond, ECM FM.	ECM FM, Increase Cond, ECM PM, DWHX.	DWHX.
RCU–Large–B2	BW Fill, PSC PM, PSC FM.	Increase Comp EER, Increase Cond.	Same as previous.	ECM PM Increase Cond.	Increase Cond, ECM FM, DWHX.	DWHX.
SCU–W–Large–B	No BW Fill, PSC PM.	BW Fill	BW Fill, Increase Comp EER, Increase Cond.	Increase Cond, ECM PM.	ECM PM, DWHX.	DWHX.
SCU–A–Small–B	No BW Fill, PSC PM, SPM FM.	PSC FM, Increase Cond.	Increase Cond, Increase Comp EER.	Increase Comp EER, BW Fill.	BW Fill, ECM PM, ECM FM, DWHX.	Same as previous.
SCU–A–Large–B	No BW Fill, PSC PM, SPM FM.	Increase Comp EER.	Increase Comp EER, Increase Cond, BW Fill.	BW Fill, PSC FM, ECM FM, ECM PM.	ECM PM, DWHX.	Same as previous.

TABLE V.3—DESIGN OPTIONS FOR ANALYZED PRODUCTS CLASSES AT EACH TSL—Continued

Equipment class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–A–Small–C	PSC AM, SPM FM.	PSC FM, Increase Comp EER.	PSC FM, Increase Comp EER.	Increase Comp EER, Increase Cond, ECM FM.	ECM FM, ECM AM.	ECM AM.
IMH–A–Large–C	PSC AM, SPM FM.	Increase Cond, Increase Comp EER.	Increase Comp EER.	Increase Comp EER, PSC FM, ECM FM.	ECM FM, ECM AM.	ECM AM.
SCU–A–Small–C	PSC AM, SPM FM.	Increase Cond	Increase Cond, Increase Comp EER.	Increase Comp EER, PSC FM.	Same as previous.	ECM FM, ECM AM.

SPM = Shaded Pole Motor
PSC = Permanent Split Capacitor Motor
ECM = Electronically Commutated Motor
FM = Fan Motor (Air-Cooled Units)
PM = Pump Motor (Batch Units)
AM = Auger Motor (Continuous Units)
BW Fill = Batch Water Fill Option Included
Increase Cond = Increase in Condenser Size
Increase Evap = Increase in Evaporator Size
Increase Comp EER = Increase in Compressor EER
DWHX = Addition of Drainwater Heat Exchanger

DOE requests comment and data related to the required equipment size increases associated with the design options at each TSL levels. Chapter 5 of the NOPR TSD contains full descriptions of the design options and DOE's analyses for the equipment size increase associated with the design options selected. DOE also requests comments and data on the efficiency gains associated with each set of design options. Chapter 5 of the NOPR TSD contains DOE's analyses of the efficiency gains for each design option considered. Finally, DOE requests comment and data on any utility impacts associated with each set of design options, such as potential ice-style changes.

2. Trial Standard Level Equations

Table V.4 and Table V.5 translate the TSLs into potential standards. In Table V.4, the TSLs are translated into energy consumption standards for the directly analyzed (primary) equipment classes. Table V.5. provides the equipment class mapping showing which of the directly analyzed standards' results were used to extend standards to secondary classes. Table V.6 extends the standards to the remaining (secondary) equipment classes that have not been analyzed directly.

TABLE V.4—POTENTIAL ENERGY CONSUMPTION STANDARDS FOR DIRECTLY ANALYZED CLASSES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	7.01–0.0050H	6.62–0.0047H	5.84–0.0041H	5.84–0.0041H	5.49–0.0039H.
IMH–W–Med–B	5.04–0.0010H	4.65–0.0007H	3.88–0.0002H	3.98–0.0004H	3.63–0.0002H.
IMH–W–Large–B	3.6	3.6	3.6	3.4	3.3.
IMH–A–Small–B	9.23–0.0077H	8.74–0.0073H	7.70–0.0065H	7.18–0.0060H	7.05–0.0059H.
IMH–A–Large–B	6.20–0.0010H	5.86–0.0009H	5.17–0.0008H	4.82–0.0008H	4.74–0.0008H.
IMH–A–Extended–B	(>= 2,500 and <4,000) 3.7;	(>=1,240 and <1,975) 4.7; (>=1,975 and <2,500) 6.89–0.0011H; (>= 2,500) 4.1.	(>=875 and <2,210) 4.5; (>=2,210 and <2,500) 6.89–0.0011H; (>= 2,500) 4.1.	(>=815 and <2,455) 4.2; (>=2,455 and <2,500) 6.89–0.0011H; (>= 2,500) 4.1.	(>=710 and <2,455) 4.2; (>=2,455 and <2,500) 6.89–0.0011H; (>= 2,500) 4.1.
RCU–NRC–Large–B	4.6	4.6	4.3	4.1	4.1.
SCU–W–Large–B	7.1	6.5	5.7	5.3	5.3.
SCU–A–Small–B	16.74–0.0436H	14.40–0.0375H	12.6–0.0328H	10.34–0.0227H	10.34–0.0227H.
SCU–A–Large–B	9.1	7.8	6.9	6.4	6.4.
IMH–A–Small–C	9.90–0.0057H	9.35–0.0053H	9.24–0.0061H	8.69–0.0058H	7.55–0.0042H.
IMH–A–Large–C	5.9	5.6	5.0	4.6	4.6.
SCU–A–Small–C	10.70–0.0058H	9.75–0.0053H	9.20–0.0050H	9.20–0.0050H	8.26–0.0045H.

TABLE V.5—DIRECTLY ANALYZED EQUIPMENT CLASSES USED TO DEVELOP STANDARDS FOR SECONDARY CLASSES

Secondary equipment class	Directly analyzed product class associated with efficiency level for secondary product class
RCU–NRC–Small–B.	RCU–NRC–Large–B.
RCU–RC–Small–B	RCU–NRC–Large–B.
RCU–RC–Large–B	RCU–NRC–Large–B.
SCU–W–Small–B	SCU–W–Large–B.
IMH–W–Small–C ..	IMH–A–Large–C.

TABLE V.5—DIRECTLY ANALYZED EQUIPMENT CLASSES USED TO DEVELOP STANDARDS FOR SECONDARY CLASSES—Continued

Secondary equipment class	Directly analyzed product class associated with efficiency level for secondary product class
IMH–W–Large–C ..	IMH–A–Large–C.
RCU–NRC–Small–C.	IMH–A–Large–C.
RCU–NRC–Large–C.	IMH–A–Large–C.

TABLE V.5—DIRECTLY ANALYZED EQUIPMENT CLASSES USED TO DEVELOP STANDARDS FOR SECONDARY CLASSES—Continued

Secondary equipment class	Directly analyzed product class associated with efficiency level for secondary product class
RCU–RC–Small–C	IMH–A–Large–C.
RCU–RC–Large–C	IMH–A–Large–C.
SCU–W–Small–C	SCU–A–Small–C.
SCU–W–Large–C	SCU–A–Small–C.
SCU–A–Large–C ..	SCU–A–Small–C.

TABLE V.6—POTENTIAL ENERGY CONSUMPTION STANDARDS FOR SECONDARY CLASSES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
RCU–NRC–Small–B	8.04–0.0034H	8.04–0.0034H	7.52–0.0032H	7.08–0.0030H	7.05–0.0030H.
RCU–RC–Small–B	8.02–0.0034H	8.02–0.0034H	7.52–0.0032H	7.08–0.0030H	7.06–0.0030H.
RCU–RC–Large–B	4.8	4.8	4.5	4.3	4.3.
SCU–W–Small–B	10.60–0.0177H	9.69–0.0162H	8.55–0.0143H	7.98–0.0133H	7.96–0.0133H.
IMH–W–Small–C	7.29–0.0030H	6.86–0.0028H	6.08–0.0025H	5.67–0.0023H	5.65–0.0023H.
IMH–W–Large–C	4.6	4.3	3.8	3.6	3.6.
RCU–NRC–Small–C	9.00–0.0041H	8.50–0.0039H	7.5–0.0034H	7.00–0.0032H	6.98–0.0032H.
RCU–NRC–Large–C	5.5	5.2	4.6	4.3	4.3.
RCU–RC–Small–C	9.18–0.0041H	8.67–0.0039H	7.65–0.0034H	7.14–0.0031H	7.12–0.0031H.
RCU–RC–Large–C	5.7	5.4	4.8	4.5	4.5.
SCU–W–Small–C	8.46–0.0031H	7.74–0.0028H	7.28–0.0027H	7.28–0.0027H	6.53–0.0024H.
SCU–W–Large–C	5.7	5.2	4.9	4.9	4.4.
SCU–A–Large–C	6.6	6.0	5.7	5.7	5.1.

In developing TSLs, DOE analyzed each equipment class separately, and attributed a percentage reduction with each portion of the standard curve (small/medium/large). To ensure that the standard curve remained connected (no gaps at the breakpoints), DOE developed a method for expressing the consumption standards that relied on pivoting the low-capacity equipment classes about a representative point. DOE was able to use the same methodology for most equipment classes, with exceptions for IMH–W–B, IMH–A–B, and RCU–RC equipment classes.

In drawing a relationship between the harvest capacity (lb ice/24 hours) and the maximum allowed energy usage (kilowatt-hours per 100 lb of ice), DOE first took the large-capacity equipment class (which is set at a constant value for all equipment types except IMH–A) and applied the allocated percentage reduction (percentage reduction associated with the TSL for that equipment class). For example, for IMH–W–Large–B, the baseline level is set at 4.0. If the TSL allocated a 10-percent reduction for IMH–W–Large–B, then the next level was set at $4.0 \times (1-10 \text{ percent}) = 3.6$ kWh/100 lb of ice.

Then, for the small equipment classes, DOE applied the allocated percentage reduction at a designated median capacity in that harvest rate range. The medium capacity was selected based on shipment levels, and where the median fell within the shipments data. For example, if the median capacity for the small equipment class was at 300 lb ice/24 hours, DOE would calculate the baseline energy usage and then apply the allocated percentage reduction to obtain a point at 300 lb ice/24 hours. DOE would then draw a line between the start of the large equipment class and this median capacity point to obtain the equation for the small equipment class, ensuring that there were no gaps between small and large-capacity.

For the IMH–W–B equipment classes, this equipment type has small, medium, and large equipment classes. In this case, for the small equipment class, DOE applied the allocated percentage reduction to the whole equation. So if the percentage reduction was 10 percent, the new equation for the small equipment class would be $(1-10 \text{ percent}) \times (7.80 - 0.0055H) = 7.02 - 0.00495H$. DOE would then draw a line between the end of the small equipment class and the start of the large equipment class, to obtain the equation for the medium equipment class.

For the IMH–A–B equipment classes, DOE sought to obtain a constant efficiency level for the largest equipment classes. This calculation is discussed in section IV.B.1.b.

For the RCU–RC–B and RCU–RC–C equipment classes, DOE simply took the standard levels calculated for the large RCU–NRC–B and RCU–NRC–C equipment classes, respectively, and subtracted the 0.2 kWh/100 lb of ice differential discussed in section IV.B.1.e, to arrive at the standard levels. For the small RCU classes, the remote compressor standards were developed such that no gap exists at the harvest rate breakpoints.

Using the typical unit size for directly analyzed equipment classes, the potential standards shown on Table V.4, DOE estimates energy usage for equipment within each class to be as shown on Table V.7.

TABLE V.7—ENERGY CONSUMPTION BY TSL FOR THE REPRESENTATIVE AUTOMATIC COMMERCIAL ICE MAKER UNITS

Equipment class	Representative harvest rate *lb ice/24 hours*	Energy consumption of the representative automatic commercial ice maker unit *kWh/100 lb*				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	300	5.5	5.2	4.6	4.6	4.3
IMH–W–Med–B	850	4.2	4.0	3.7	3.6	3.5
IMH–W–Large–B–1	1500	3.6	3.6	3.6	3.4	3.3
IMH–W–Large–B–2	2600	3.6	3.6	3.6	3.4	3.3
IMH–A–Small–B	300	6.9	6.5	5.8	5.4	5.3
IMH–A–Large–B–1	800	5.4	5.1	4.5	4.2	4.1
IMH–A–Large–B–2	1500	3.7	4.7	4.5	4.2	4.2
RCU–Large–B–1	1500	4.6	4.6	4.3	4.1	4.1
RCU–Large–B–2	2400	4.6	4.6	4.3	4.1	4.1
SCU–W–Large–B	300	7.1	6.5	5.7	5.3	5.3
SCU–A–Small–B	110	11.9	10.3	9.0	7.8	7.8
SCU–A–Large–B	200	9.1	7.8	6.9	6.4	6.4
IMH–A–Small–C	310	8.1	7.7	7.3	6.9	6.2
IMH–A–Large–C	820	5.9	5.6	5.0	4.6	4.6
SCU–A–Small–C	110	10.1	9.2	8.7	8.7	7.8

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

Customers affected by new or amended standards usually incur higher purchase prices and lower operating costs. DOE evaluates these impacts on individual customers by calculating changes in LCC and the PBP associated with the TSLs. The results of the LCC analysis for each TSL were obtained by comparing the installed and operating costs of the equipment in the base-case scenario (scenario with no amended energy conservation standards) against the standards-case scenarios at each TSL. The energy consumption values for both the base-case and standards-case scenarios were calculated based on the DOE test procedure conditions specified in the 2012 test procedure final rule, which adopts an industry-accepted test method. Using the approach described in section IV.G, DOE calculated the LCC savings and PBPs for the TSLs considered in this NOPR. The LCC analysis is carried out in the form of Monte Carlo simulations. Consequently, the results of LCC analysis are distributed over a range of values, as opposed to a single deterministic value. DOE presents the mean or median values, as appropriate, calculated from the distributions of results.

Table V.8 through Table V.25 show the results of the LCC analysis for each equipment class. Each table presents the results of the LCC analysis, including mean LCC, mean LCC savings, median PBP, and distribution of customer impacts in the form of percentages of customers who experience net cost, no impact, or net benefit.

Only two equipment classes have negative LCC savings values at TSL 5: SCU–A–Small–C and IMH–A–Small–C. Negative average LCC savings imply that, on average, customers experience an increase in LCC of the equipment as a consequence of buying equipment associated with that particular TSL. In many cases, the TSL 5 level is not negative, but the LCC savings are sharply lower than the TSL 3 levels. For IMH–W–Small–B, SCU–W–Large–B, and SCU–A–Small–B, the TSL 5 LCC savings are less than one-third the TSL 3 savings. In other cases, such as IMH–W–Large–B2, IMH–A–Small–B, SCU–A–Large–B, and IMH–A–Large–C, the TSL 5 LCC savings are roughly one-half of the TSL 3 LCC savings or less. All of these results indicate the cost increments associated with the max-tech design option are high, and the increase in LCC (and corresponding decrease in LCC savings) indicates that this design option may result in negative customer impacts. TSL 5 is associated with the max-tech level for all the equipment classes. Drain water heat exchanger technology is the design option associated with the max-tech efficiency levels for batch equipment classes. For continuous equipment classes, the max-tech design options are auger motors using permanent magnets.

The mean LCC savings associated with TSL 4 are all positive values for all equipment classes. The mean LCC savings at all lower TSL levels are also positive. The trend is generally an increase in LCC savings for TSL 1 through 3, with LCC savings either remaining constant or declining at TSL 4. In three cases, the highest LCC savings are at TSL 2: IMH–A–Large–B2, RCU–Large–B2, and SCU–A–Large–B. The drop-off in LCC savings at TSL 4 is generally associated with the relatively large cost for the max-tech design options, the savings for which frequently span the last two efficiency levels.

As described in section IV.H.2, DOE used a ''roll-up'' scenario in this rulemaking. Under the roll-up scenario, DOE assumes that the market shares of the efficiency levels (in the base case) that do not meet the standard level under consideration would be ''rolled up'' into (meaning ''added to'') the market share of the efficiency level at the standard level under consideration, and the market shares of efficiency levels that are above the standard level under consideration would remain unaffected. Customers, in the base-case scenario, who buy the equipment at or above the TSL under consideration, would be unaffected if the amended standard were to be set at that TSL. Customers, in the base-case scenario, who buy equipment below the TSL under consideration would be affected if the amended standard were to be set at that TSL. Among these affected customers, some may benefit from lower LCC of the equipment and some may incur net cost due to higher LCC, depending on the inputs to LCC analysis such as electricity prices, discount rates, installation costs, and markups. DOE's results indicate that, with one exception, customers either benefit or are unaffected by setting standards at TSLs 1, 2, or 3, and at TSL 4 in the case of SCU–A–Small–C. Customers either benefit or are unaffected at all 5 TSLs in the case of IMH–W–Large–B1. In the case of IMH–W–Small–B, 3 percent of

customers are projected to experience a net cost at TSL 3. A large percentage of customers in batch equipment classes are unaffected by a standard set at TSL 1 given the equivalence to ENERGY STAR and the prevalence of ENERGY STAR qualifying equipment in those classes. At the other end of the range, in almost all cases, a portion of the market would experience net costs starting with TSL 4, although generally the portion experiencing a net cost is fairly low. At TSL 5, the range is wide, with all customers either unaffected or with a net benefit for the IMH–W–Large–B1 typical unit at one extreme and 100 percent of customers with either a net cost or unaffected for SCU–A–Small–C. In the cases of nine of the 18 equipment classes and/or typical unit sizes modeled (12 classes plus 3 pairs of typical units for large, batch type equipment classes), 20 percent or more of customers would experience a net cost at TSL 5. In the other nine cases, the percent of customers experiencing a net cost at TSL 5 ranges from 0 to 16 percent, with the remaining customers either unaffected or experiencing a net benefit.

The median PBP values for TSLs 1 through 3 are all less than 2 years, except for IMH–W–Small–B where the TSL 3 PBP is 2.3 years. The median PBP values for TSL 4 range from 1.9 years to 4.8 years.

PBP values for TSL 5 range from 2.2 years to over 19 years. SCU–A–Small–C exhibits the longest PBP for TSL 5 at 19.1 years. IMH–A–Small–C has a PBP of nearly 7 years, while IMH–W–Small–B has a PBP over 5 years. IMH–A–Small–B and SCU–A–Small–B both PBPs at or above 4 years for TSL 5.

TABLE V.8—SUMMARY LCC AND PBP RESULTS FOR IMH–W–SMALL–B EQUIPMENT CLASS

TSL	Energy usage *kWh/yr*	Life-cycle cost, all customers *2012$*			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings *2012$*	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	3,052	2,425	10,862	13,286	199	0	61	39	1.1
2	2,884	2,451	10,740	13,191	215	0	35	65	1.3
3	2,547	2,614	10,369	12,982	328	3	0	97	2.3
4	2,547	2,614	10,369	12,982	328	3	0	97	2.3
5	2,400	2,999	10,262	13,261	49	45	0	55	5.4

TABLE V.9—SUMMARY LCC AND PBP RESULTS FOR IMH–W–MED–B EQUIPMENT CLASS

TSL	Energy usage *kWh/yr*	Life-cycle cost, all customers *2012$*			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings *2012$*	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	6,507	4,241	24,859	29,100	464	0	31	69	0.6
2	6,507	4,241	24,859	29,100	464	0	31	69	0.6
3	6,147	4,286	24,601	28,887	587	0	14	86	0.9
4	5,786	4,656	24,341	28,997	405	15	2	83	3.3
5	5,691	4,671	24,272	28,943	460	11	2	87	3.2

TABLE V.10—SUMMARY LCC AND PBP RESULTS FOR IMH–W–LARGE–B EQUIPMENT CLASS

TSL	Energy usage *kWh/yr*	Life-cycle cost, all customers *2012$*			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings *2012$*	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	11,585	6,243	49,854	56,097	833	0	38	62	0.7
2	11,585	6,243	49,854	56,097	833	0	38	62	0.7
3	11,585	6,243	49,854	56,097	833	0	38	62	0.7
4	10,943	6,813	49,390	56,202	550	8	26	66	3.6
5	10,783	6,868	49,274	56,142	582	7	22	71	3.6

TABLE V.11—SUMMARY LCC AND PBP RESULTS FOR IMH–W–LARGE–B1 EQUIPMENT CLASS

TSL	Energy usage *kWh/yr*	Life-cycle cost, all customers *2012$*			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings *2012$*	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	9,877	5,132	42,919	48,051	701	0	29	71	0.7
2	9,877	5,132	42,919	48,051	701	0	29	71	0.7
3	9,877	5,132	42,919	48,051	701	0	29	71	0.7
4	9,329	5,646	42,523	48,170	583	0	29	71	3.7
5	9,147	5,717	42,392	48,109	607	0	24	76	3.8

TABLE V.12—SUMMARY LCC AND PBP RESULTS FOR IMH–W–LARGE–B2 EQUIPMENT CLASS

TSL	Energy usage *kWh/yr*	Life-cycle cost, all customers *2012$*			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings *2012$*	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	17,104	9,833	72,254	82,087	1,260	0	67	33	0.6
2	17,104	9,833	72,254	82,087	1,260	0	67	33	0.6
3	17,104	9,833	72,254	82,087	1,260	0	67	33	0.6
4	16,155	10,581	71,569	82,150	442	35	17	48	3.1
5	16,067	10,587	71,506	82,093	500	29	17	54	3.0

TABLE V.13—SUMMARY LCC AND PBP RESULTS FOR IMH–A–SMALL–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	3,806	2,475	9,046	11,521	254	0	63	37	1.1
2	3,596	2,506	8,894	11,400	259	0	32	68	1.2
3	3,176	2,574	8,601	11,174	396	0	0	100	1.4
4	2,965	2,951	8,449	11,400	170	27	0	73	4.3
5	2,909	2,964	8,408	11,372	198	22	0	78	4.2

TABLE V.14—SUMMARY LCC AND PBP RESULTS FOR IMH–A–LARGE–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	8,704	4,179	16,075	20,254	648	0	60	40	0.5
2	8,334	4,199	15,813	20,013	633	0	23	77	0.5
3	7,482	4,335	15,017	19,352	1,127	0	6	94	0.8
4	7,041	4,739	14,703	19,442	994	4	2	94	2.2
5	7,041	4,739	14,703	19,442	994	4	2	94	2.2

TABLE V.15—SUMMARY LCC AND PBP RESULTS FOR IMH–A–LARGE–B1 EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	7,919	4,119	15,303	19,421	590	0	59	41	0.5
2	7,480	4,143	14,993	19,135	572	0	15	85	0.5
3	6,603	4,279	14,143	18,421	1,168	0	0	100	0.8
4	6,213	4,663	13,865	18,528	1,062	1	0	99	2.1
5	6,213	4,663	13,865	18,528	1,062	1	0	99	2.1

TABLE V.16—SUMMARY LCC AND PBP RESULTS FOR IMH–A–LARGE–B2 EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	12,932	4,505	20,234	24,739	960	0	67	33	0.4
2	12,932	4,505	20,234	24,739	960	0	67	33	0.4
3	12,215	4,641	19,725	24,366	908	0	40	60	0.9
4	11,498	5,151	19,217	24,368	627	16	13	70	2.6
5	11,498	5,151	19,217	24,368	627	16	13	70	2.6

TABLE V.17—SUMMARY LCC AND PBP RESULTS FOR RCU–LARGE–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	13,205	6,321	16,686	23,007	875	0	58	42	0.4
2	13,205	6,321	16,686	23,007	875	0	58	42	0.4
3	12,335	6,406	16,063	22,469	983	0	18	82	0.6
4	11,611	6,934	15,551	22,485	870	6	10	85	2.4
5	11,526	6,968	15,490	22,458	897	5	10	85	2.4

TABLE V.18—SUMMARY LCC AND PBP RESULTS FOR RCU–LARGE–B1 EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	12,727	6,135	16,214	22,349	847	0	57	43	0.4
2	12,727	6,135	16,214	22,349	847	0	57	43	0.4
3	11,889	6,214	15,614	21,828	963	0	18	82	0.6
4	11,191	6,722	15,119	21,840	857	6	9	85	2.4
5	11,108	6,756	15,059	21,815	882	5	9	86	2.4

TABLE V.19—SUMMARY LCC AND PBP RESULTS FOR RCU–LARGE–B2 EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	20,349	9,105	23,743	32,847	1,298	0	73	27	0.8
2	20,349	9,105	23,743	32,847	1,298	0	73	27	0.8
3	19,009	9,283	22,775	32,058	1,277	0	27	73	1.0
4	17,892	10,108	22,017	32,124	1,070	7	18	75	2.7
5	17,779	10,137	21,935	32,072	1,123	6	18	76	2.7

TABLE V.20—SUMMARY LCC AND PBP RESULTS FOR SCU–W–LARGE–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	3,892	3,501	12,082	15,583	483	0	71	29	0.7
2	3,559	3,530	11,849	15,379	687	0	71	29	0.8
3	3,143	3,596	11,548	15,144	694	0	57	43	1.0
4	2,935	3,950	11,398	15,348	143	49	14	36	3.0
5	2,925	3,951	11,391	15,342	149	49	14	37	3.0

TABLE V.21—SUMMARY LCC AND PBP RESULTS FOR SCU–A–SMALL–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	2,419	2,772	7,548	10,321	103	0	83	17	1.4
2	2,084	2,821	7,320	10,141	198	0	37	63	1.5
3	1,826	2,896	6,979	9,875	396	0	11	89	1.6
4	1,585	3,306	6,813	10,119	106	32	0	68	4.8
5	1,585	3,306	6,813	10,119	106	32	0	68	4.8

TABLE V.22—SUMMARY LCC AND PBP RESULTS FOR SCU–A–LARGE–B EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	3,349	3,243	10,645	13,888	140	0	71	29	1.4
2	2,884	3,324	10,105	13,429	522	0	36	64	1.2
3	2,526	3,405	9,857	13,262	502	0	7	93	1.5
4	2,351	3,758	9,731	13,489	240	34	0	66	3.7
5	2,351	3,758	9,731	13,489	240	34	0	66	3.7

TABLE V.23—SUMMARY LCC AND PBP RESULTS FOR IMH–A–SMALL–C EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$ *	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	4,630	6,644	9,390	16,034	315	0	77	23	0.9
2	4,374	6,666	9,212	15,877	314	0	54	46	0.9
3	4,118	6,694	9,031	15,726	391	0	40	60	1.0
4	3,862	6,913	8,848	15,761	307	8	31	61	2.6
5	3,555	7,461	8,789	16,251	(237)	73	11	16	6.8

* Values in parentheses are negative values.

TABLE V.24—SUMMARY LCC AND PBP RESULTS FOR IMH–A–LARGE–C EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	8,911	5,518	15,462	20,980	660	0	65	35	0.5
2	8,417	5,543	15,113	20,656	744	0	45	55	0.5
3	7,430	5,630	14,426	20,055	1,026	0	15	85	0.7
4	6,936	6,288	14,269	20,557	524	21	15	64	3.2
5	6,912	6,289	14,262	20,552	500	21	10	69	3.2

TABLE V.25—SUMMARY LCC AND PBP RESULTS FOR SCU–A–SMALL–C EQUIPMENT CLASS

TSL	Energy usage kWh/yr	Life-cycle cost, all customers 2012$			Life-cycle cost savings				Payback period, median *years*
		Installed cost	Discounted operating cost	LCC	Affected customers' average savings 2012$ *	% of customers that experience			
						Net cost %	No impact %	Net benefit %	
1	2,040	3,603	7,243	10,846	93	0	73	27	1.1
2	1,866	3,632	7,127	10,760	140	0	53	47	1.5
3	1,758	3,659	7,057	10,717	146	0	37	63	1.9
4	1,758	3,659	7,057	10,717	146	0	37	63	1.9
5	1,580	4,196	7,099	11,295	(441)	80	20	0	19.1

* Values in parentheses are negative values.

b. Life-Cycle Cost Subgroup Analysis

As described in section IV.I, DOE estimated the impact of amended energy conservation standards for automatic commercial ice makers, at each TSL, on two customer subgroups—the foodservice sector and the lodging sector. For the automatic commercial ice makers, DOE has not distinguished between subsectors of the foodservice industry. In other words, DOE has been treating it as one sector as opposed to modeling limited or full service restaurants and other types of foodservice firms separately. Foodservice was chosen as one representative subgroup because of the large percentage of the industry represented by family or locally owned restaurants. Likewise, lodging was chosen due to the large percentage of the industry represented by locally owned, or franchisee-owned hotels. DOE carried out two LCC subgroup analyses, one each for restaurants and lodging, by using the LCC spreadsheet described in chapter 8 of the NOPR, but with certain modifications. The input for business type was fixed to the identified subgroup, which ensured that the discount rates and electricity price rates associated with only that subgroup were selected in the Monte Carlo simulations (see chapter 8 of the NOPR TSD). Another major change from the LCC analysis was an added assumption that the subgroups do not have access to national capital markets, which results in higher discount rates for the subgroups. The higher discount rates lead the subgroups valuing more highly upfront equipment purchase costs relative to the future operating cost savings. The LCC subgroup analysis is described in chapter 8 of the NOPR TSD.

Table V.26 presents the comparison of mean LCC savings for the small business subgroup in foodservice sector with the national average values (LCC savings results from chapter 8 of the NOPR TSD). For almost all TSLs in all equipment classes, the LCC savings for the small business subgroup are lower than the national average values. The exception is the TSL 5 result for SCU–A–Small–C. Table V.27 presents the percentage change in LCC savings compared to national average values. DOE modeled all equipment classes in this analysis, although DOE believes it is likely that the very large equipment classes are not commonly used in foodservice establishments. For TSLs 1 through 3, the differences range from −2 percent to −6 percent. For all but three equipment classes in Table V.27, the percentage decrease in LCC savings is less than 10 percent for all TSLs. For SCU–W–Large–B, the TSL 4 and 5 differences were −11 percent. SCU–A–Small–B, the TSL 4 and 5 differences were −17 percent. For IMH–W–Small–B, the TSL 5 difference is −37 percent.

Table V.28 presents the comparison of median PBPs for the small business subgroup in foodservice sector with national median values (median PBPs from chapter 8 of the NOPR TSD). The PBP values are shorter for the small business subgroup in all cases. This arises because the first-year operating cost savings—which are used for payback period—are higher leading to a shorter payback, but given their higher discount rates, these customers value future savings less, leading to lower LCC savings. First-year savings are higher because the foodservice electricity prices are higher than the average of all classes.

Table V.29 presents the comparison of mean LCC savings for the small business subgroup in lodging sector (hotels and casinos) with the national average values (LCC savings results from chapter 8 of the NOPR TSD). Table V.30 presents the percentage change in LCC savings of the lodging sector customer subgroup to national average values. For lodging sector small business, LCC savings are lower across the board. For TSLs 1 through 3, the lodging subgroup LCC savings range from 9 to 13 percent lower. The reason for this is that the energy price for lodging is slightly lower than the average of all commercial business types (97 percent of the average). This combined with a higher discount rate reduces the nominal value of future operating and maintenance benefits as well as the present value of the benefits, thus resulting in lower LCC savings.

Table V.31 presents the comparison of median PBPs for small business subgroup in the lodging sector with national median values (median PBPs from chapter 8 of the NOPR TSD). The PBP values are slightly higher in the lodging small business subgroup in all instances. As noted above, the energy savings would be lower in nominal terms than a national average Thus, the slightly lower median PBP appears to be a result of a narrower electricity saving results distribution that is close to but below the national average.

TABLE V.26—COMPARISON OF MEAN LCC SAVINGS FOR THE FOODSERVICE SECTOR SMALL BUSINESS SUBGROUP WITH THE NATIONAL AVERAGE VALUES

Equipment class	Category	Mean LCC savings *2012$**				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	Small Business	195	210	312	312	31
	All Business Types	199	215	328	328	49
IMH–W–Med–B	Small Business	455	455	575	390	443
	All Business Types	464	464	587	405	460
IMH–W–Large–B	Small Business	816	816	816	528	559
	All Business Types	833	833	833	550	582
IMH–W–Large–B1	Small Business	687	687	687	561	585
	All Business Types	701	701	701	583	607
IMH–W–Large–B2	Small Business	1,233	1,233	1,233	419	476
	All Business Types	1,260	1,260	1,260	442	500
IMH–A–Small–B	Small Business	249	253	387	159	185
	All Business Types	254	259	396	170	198
IMH–A–Large–B	Small Business	635	621	1,094	956	956
	All Business Types	648	633	1,127	994	994
IMH–A–Large–B1	Small Business	578	561	1,132	1,021	1,021
	All Business Types	590	572	1,168	1,062	1,062
IMH–A–Large–B2	Small Business	941	941	888	604	604
	All Business Types	960	960	908	627	627
RCU–Large–B	Small Business	858	858	963	843	869
	All Business Types	875	875	983	870	897
RCU–Large–B1	Small Business	830	830	944	831	855
	All Business Types	847	847	963	857	882
RCU–Large–B2	Small Business	1,270	1,270	1,249	1,032	1,084
	All Business Types	1,298	1,298	1,277	1,070	1,123
SCU–W–Large–B	Small Business	455	655	666	126	132
	All Business Types	483	687	694	143	149
SCU–A–Small–B	Small Business	100	194	378	88	88
	All Business Types	103	198	396	106	106
SCU–A–Large–B	Small Business	137	498	483	219	219
	All Business Types	140	522	502	240	240
IMH–A–Small–C	Small Business	308	307	383	296	(238)
	All Business Types	315	314	391	307	(237)
IMH–A–Large–C	Small Business	647	729	1,006	512	489
	All Business Types	660	744	1,026	524	500
SCU–A–Small–C	Small Business	91	137	143	143	(434)

TABLE V.26—COMPARISON OF MEAN LCC SAVINGS FOR THE FOODSERVICE SECTOR SMALL BUSINESS SUBGROUP WITH THE NATIONAL AVERAGE VALUES—Continued

Equipment class	Category	Mean LCC savings *2012$**				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
	All Business Types	93	140	146	146	(441)

*Values in parenthesis are negative numbers.

TABLE V.27—PERCENTAGE CHANGE IN MEAN LCC SAVINGS FOR THE FOODSERVICE SECTOR SMALL BUSINESS SUBGROUP COMPARED TO NATIONAL AVERAGE VALUES*

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	(2%)	(2%)	(5%)	(5%)	(37%)
IMH–W–Med–B	(2%)	(2%)	(2%)	(4%)	(4%)
IMH–W–Large–B	(2%)	(2%)	(2%)	(4%)	(4%)
IMH–W–Large–B1	(2%)	(2%)	(2%)	(4%)	(4%)
IMH–W–Large–B2	(2%)	(2%)	(2%)	(5%)	(5%)
IMH–A–Small–B	(2%)	(2%)	(2%)	(7%)	(6%)
IMH–A–Large–B	(2%)	(2%)	(3%)	(4%)	(4%)
IMH–A–Large–B1	(2%)	(2%)	(3%)	(4%)	(4%)
IMH–A–Large–B2	(2%)	(2%)	(2%)	(4%)	(4%)
RCU–Large–B	(2%)	(2%)	(2%)	(3%)	(3%)
RCU–Large–B1	(2%)	(2%)	(2%)	(3%)	(3%)
RCU–Large–B2	(2%)	(2%)	(2%)	(3%)	(3%)
SCU–W–Large–B	(6%)	(5%)	(4%)	(11%)	(11%)
SCU–A–Small–B	(2%)	(2%)	(5%)	(17%)	(17%)
SCU–A–Large–B	(2%)	(4%)	(4%)	(9%)	(9%)
IMH–A–Small–C	(2%)	(2%)	(2%)	(3%)	0%
IMH–A–Large–C	(2%)	(2%)	(2%)	(2%)	(2%)
SCU–A–Small–C	(2%)	(2%)	(2%)	(2%)	2%

*Values in parenthesis are negative numbers. Negative percentage values imply decrease in LCC savings and positive percentage values imply increase in LCC savings.

TABLE V.28—COMPARISON OF MEDIAN PAYBACK PERIODS FOR THE FOODSERVICE SECTOR SMALL BUSINESS SUBGROUP WITH NATIONAL MEDIAN VALUES

Equipment class	Category	Median payback period *years*				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	Small Business	1.02	1.20	2.16	2.16	5.14
	All Business Types	1.07	1.26	2.27	2.27	5.42
IMH–W–Med–B	Small Business	0.60	0.60	0.81	3.17	3.06
	All Business Types	0.63	0.63	0.85	3.33	3.22
IMH–W–Large–B	Small Business	0.65	0.65	0.65	3.42	3.42
	All Business Types	0.69	0.69	0.69	3.59	3.60
IMH–W–Large–B1	Small Business	0.68	0.68	0.68	3.57	3.59
	All Business Types	0.72	0.72	0.72	3.75	3.77
IMH–W–Large–B2	Small Business	0.55	0.55	0.55	2.95	2.88
	All Business Types	0.58	0.58	0.58	3.10	3.02
IMH–A–Small–B	Small Business	1.02	1.16	1.35	4.11	4.03
	All Business Types	1.07	1.22	1.42	4.32	4.24
IMH–A–Large–B	Small Business	0.44	0.47	0.80	2.06	2.06
	All Business Types	0.46	0.49	0.84	2.16	2.16
IMH–A–Large–B1	Small Business	0.44	0.48	0.78	1.99	1.99
	All Business Types	0.46	0.50	0.82	2.08	2.08
IMH–A–Large–B2	Small Business	0.40	0.40	0.90	2.45	2.45
	All Business Types	0.42	0.42	0.94	2.58	2.58
RCU–Large–B	Small Business	0.39	0.39	0.62	2.27	2.32
	All Business Types	0.41	0.41	0.65	2.39	2.44
RCU–Large–B1	Small Business	0.37	0.37	0.59	2.25	2.31
	All Business Types	0.38	0.38	0.62	2.37	2.42
RCU–Large–B2	Small Business	0.72	0.72	0.96	2.57	2.57
	All Business Types	0.75	0.75	1.00	2.70	2.70
SCU–W–Large–B	Small Business	0.65	0.73	0.96	2.87	2.86
	All Business Types	0.67	0.76	1.00	3.01	3.00
SCU–A–Small–B	Small Business	1.33	1.44	1.48	4.54	4.54
	All Business Types	1.40	1.52	1.56	4.79	4.79
SCU–A–Large–B	Small Business	1.29	1.11	1.42	3.54	3.54

TABLE V.28—COMPARISON OF MEDIAN PAYBACK PERIODS FOR THE FOODSERVICE SECTOR SMALL BUSINESS SUBGROUP WITH NATIONAL MEDIAN VALUES—Continued

Equipment class	Category	Median payback period *years*				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
	All Business Types	1.37	1.17	1.49	3.72	3.72
IMH–A–Small–C	Small Business	0.86	0.86	0.92	2.46	6.38
	All Business Types	0.90	0.90	0.97	2.59	6.83
IMH–A–Large–C	Small Business	0.50	0.50	0.65	3.06	3.05
	All Business Types	0.52	0.53	0.69	3.25	3.24
SCU–A–Small–C	Small Business	1.08	1.45	1.76	1.76	17.09
	All Business Types	1.13	1.53	1.85	1.85	19.12

TABLE V.29—COMPARISON OF LCC SAVINGS FOR THE LODGING SECTOR SMALL BUSINESS SUBGROUP WITH THE NATIONAL AVERAGE VALUES

Equipment class	Category	Mean LCC savings *2012$**				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	Small Business	179	192	285	285	(3)
	All Business Types	199	215	328	328	49
IMH–W–Med–B	Small Business	421	421	531	334	382
	All Business Types	464	464	587	405	460
IMH–W–Large–B	Small Business	756	756	756	449	476
	All Business Types	833	833	833	550	582
IMH–W–Large–B1	Small Business	635	635	635	484	503
	All Business Types	701	701	701	583	607
IMH–W–Large–B2	Small Business	1,144	1,144	1,144	338	390
	All Business Types	1,260	1,260	1,260	442	500
IMH–A–Small–B	Small Business	229	232	354	115	139
	All Business Types	254	259	396	170	198
IMH–A–Large–B	Small Business	589	575	1,018	862	862
	All Business Types	648	633	1,127	994	994
IMH–A–Large–B1	Small Business	536	520	1,056	926	926
	All Business Types	590	572	1,168	1,062	1,062
IMH–A–Large–B2	Small Business	873	873	816	521	521
	All Business Types	960	960	908	627	627
RCU–Large–B	Small Business	796	796	890	744	766
	All Business Types	875	875	983	870	897
RCU–Large–B1	Small Business	771	771	873	734	754
	All Business Types	847	847	963	857	882
RCU–Large–B2	Small Business	1,175	1,175	1,149	891	937
	All Business Types	1,298	1,298	1,277	1,070	1,123
SCU–W–Large–B	Small Business	440	624	626	96	102
	All Business Types	483	687	694	143	149
SCU–A–Small–B	Small Business	92	177	353	55	55
	All Business Types	103	198	396	106	106
SCU–A–Large–B	Small Business	126	470	448	179	179
	All Business Types	140	522	502	240	240
IMH–A–Small–C	Small Business	284	283	352	257	(281)
	All Business Types	315	314	391	307	(237)
IMH–A–Large–C	Small Business	600	676	929	412	394
	All Business Types	660	744	1,026	524	500
SCU–A–Small–C	Small Business	84	125	128	128	(452)
	All Business Types	93	140	146	146	(441)

* Values in parentheses are negative numbers.

TABLE V.30—PERCENTAGE CHANGE IN MEAN LCC SAVINGS FOR THE LODGING SECTOR SMALL BUSINESS SUBGROUP COMPARED TO NATIONAL AVERAGE VALUES *

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	(10%)	(10%)	(13%)	(13%)	(107%)
IMH–W–Med–B	(9%)	(9%)	(10%)	(18%)	(17%)
IMH–W–Large–B	(9%)	(9%)	(9%)	(18%)	(18%)
IMH–W–Large–B1	(9%)	(9%)	(9%)	(17%)	(17%)
IMH–W–Large–B2	(9%)	(9%)	(9%)	(24%)	(22%)
IMH–A–Small–B	(10%)	(10%)	(11%)	(32%)	(30%)
IMH–A–Large–B	(9%)	(9%)	(10%)	(13%)	(13%)

TABLE V.30—PERCENTAGE CHANGE IN MEAN LCC SAVINGS FOR THE LODGING SECTOR SMALL BUSINESS SUBGROUP COMPARED TO NATIONAL AVERAGE VALUES *—Continued

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–A–Large–B1	(9%)	(9%)	(10%)	(13%)	(13%)
IMH–A–Large–B2	(9%)	(9%)	(10%)	(17%)	(17%)
RCU–Large–B	(9%)	(9%)	(9%)	(15%)	(15%)
RCU–Large–B1	(9%)	(9%)	(9%)	(14%)	(15%)
RCU–Large–B2	(9%)	(9%)	(10%)	(17%)	(16%)
SCU–W–Large–B	(9%)	(9%)	(10%)	(33%)	(32%)
SCU–A–Small–B	(11%)	(11%)	(11%)	(49%)	(49%)
SCU–A–Large–B	(10%)	(10%)	(11%)	(25%)	(25%)
IMH–A–Small–C	(10%)	(10%)	(10%)	(16%)	(18%)
IMH–A–Large–C	(9%)	(9%)	(9%)	(21%)	(21%)
SCU–A–Small–C	(10%)	(11%)	(12%)	(12%)	(2%)

* Values in parentheses are negative numbers. Negative percentage values imply decrease in LCC savings and positive percentage values imply increase in LCC savings.

TABLE V.31—COMPARISON OF MEDIAN PAYBACK PERIODS FOR THE LODGING SECTOR SMALL BUSINESS SUBGROUP WITH THE NATIONAL MEDIAN VALUES

Equipment class	Category	Median payback period *years*				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	Small Business	1.09	1.28	2.27	2.27	5.42
	All Business Types	1.07	1.26	2.27	2.27	5.42
IMH–W–Med–B	Small Business	0.64	0.64	0.86	3.38	3.26
	All Business Types	0.63	0.63	0.85	3.33	3.22
IMH–W–Large–B	Small Business	0.70	0.70	0.70	3.65	3.65
	All Business Types	0.69	0.69	0.69	3.59	3.60
IMH–W–Large–B1	Small Business	0.73	0.73	0.73	3.80	3.83
	All Business Types	0.72	0.72	0.72	3.75	3.77
IMH–W–Large–B2	Small Business	0.58	0.58	0.58	3.14	3.07
	All Business Types	0.58	0.58	0.58	3.10	3.02
IMH–A–Small–B	Small Business	1.08	1.24	1.44	4.39	4.30
	All Business Types	1.07	1.22	1.42	4.32	4.24
IMH–A–Large–B	Small Business	0.46	0.50	0.85	2.19	2.19
	All Business Types	0.46	0.49	0.84	2.16	2.16
IMH–A–Large–B1	Small Business	0.47	0.51	0.83	2.11	2.11
	All Business Types	0.46	0.50	0.82	2.08	2.08
IMH–A–Large–B2	Small Business	0.43	0.43	0.96	2.61	2.61
	All Business Types	0.42	0.42	0.94	2.58	2.58
RCU–Large–B	Small Business	0.41	0.41	0.66	2.42	2.48
	All Business Types	0.41	0.41	0.65	2.39	2.44
RCU–Large–B1	Small Business	0.39	0.39	0.63	2.40	2.46
	All Business Types	0.38	0.38	0.62	2.37	2.42
RCU–Large–B2	Small Business	0.77	0.77	1.02	2.74	2.74
	All Business Types	0.75	0.75	1.00	2.70	2.70
SCU–W–Large–B	Small Business	0.67	0.75	1.01	3.01	3.00
	All Business Types	0.67	0.76	1.00	3.01	3.00
SCU–A–Small–B	Small Business	1.42	1.54	1.56	4.79	4.79
	All Business Types	1.40	1.52	1.56	4.79	4.79
SCU–A–Large–B	Small Business	1.38	1.17	1.49	3.72	3.72
	All Business Types	1.37	1.17	1.49	3.72	3.72
IMH–A–Small–C	Small Business	0.92	0.92	0.99	2.63	6.88
	All Business Types	0.90	0.90	0.97	2.59	6.83
IMH–A–Large–C	Small Business	0.53	0.53	0.70	3.28	3.28
	All Business Types	0.52	0.53	0.69	3.25	3.24
SCU–A–Small–C	Small Business	1.15	1.55	1.88	1.88	19.13
	All Business Types	1.13	1.53	1.85	1.85	19.12

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of automatic commercial ice makers. The following section 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

The following tables depict the financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of automatic commercial ice makers as well as the conversion costs that DOE estimates manufacturers would incur for all equipment classes at each TSL. To evaluate the range of cash flow impacts on the commercial ice maker industry, DOE used two different

markup assumptions to model scenarios that correspond to the range of anticipated market responses to new and amended energy conservation standards.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform ''gross margin percentage'' markup is applied across all efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the amended energy conservation standards case. Manufacturers have indicated that it is optimistic to assume that they would be able to maintain the same gross margin percentage markup as their production costs increase in response to a new or amended energy conservation standard, particularly at higher TSLs.

To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of the EBIT markup scenario, which assumes that manufacturers would not be able to preserve the same overall gross margin, but instead cut their markup for marginally compliant products to maintain a cost competitive product offering and keep the same overall level of EBIT as in the base case. The two tables below show the range of potential INPV impacts for manufacturers of automatic commercial ice makers. The first table reflects the lower bound of impacts (higher profitability) and the second represents the upper bound of impacts (lower profitability).

Each scenario results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the sum of discounted cash flows through 2047, the difference in INPV between the base case and each standards case, and the total industry conversion costs required for each standards case.

TABLE V.32—MANUFACTURER IMPACT ANALYSIS FOR AUTOMATIC COMMERCIAL ICE MAKERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO *

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2012$ Millions	$101.8	$93.4	$89.0	$80.9	$82.2	$81.9
Change in INPV	2012$ Millions	.....	$(8.4)	$(12.8)	$(20.9)	$(19.6)	$(19.9)
	(%)	.....	(8.2)%	(12.6)%	(20.5)%	(19.2)%	(19.5)%
Product Conversion Costs	2012$ Millions	.....	$17.0	$25.4	$38.3	$44.8	$46.9
Capital Conversion Costs	2012$ Millions	.....	$0.4	$1.2	$3.9	$6.4	$7.3
Total Conversion Costs	2012$ Millions	.....	$17.4	$26.6	$42.2	$51.2	$54.2

* Values in parentheses are negative numbers.

TABLE V.33—MANUFACTURER IMPACT ANALYSIS FOR AUTOMATIC COMMERCIAL ICE MAKERS—PRESERVATION OF EBIT MARKUP SCENARIO *

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2012$ Millions	$101.8	$93.1	$88.2	$77.9	$71.3	$69.2
Change in INPV	2012$ Millions	.....	$(8.7)	$(13.6)	$(23.9)	$(30.5)	$(32.6)
	(%)	.....	(8.5)%	(13.4)%	(23.5)%	(30.0)%	(32.0)%
Product Conversion Costs	2012$ Millions	.....	$17.0	$25.4	$38.3	$44.8	$46.9
Capital Conversion Costs	2012$ Millions	.....	$0.4	$1.2	$3.9	$6.4	$7.3
Total Conversion Costs	2012$ Millions	.....	$17.4	$26.6	$42.2	$51.2	$54.2

* Values in parentheses are negative numbers.

Beyond impacts on INPV, DOE includes a comparison of free cash flow between the base case and the standards case at each TSL in the year before amended standards take effect to provide perspective on the short-run cash flow impacts in the discussion of the results below.

At TSL 1, DOE estimates impacts on INPV for manufacturers of automatic commercial ice makers to range from −$8.4 million to −$8.7 million, or a change in INPV of −8.2 percent to −8.5 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 61 percent to $3.3 million, compared to the base-case value of $8.4 million in the year before the compliance date (2017).

DOE estimates that approximately 40 percent of all batch commercial ice makers and 30 percent of all continuous commercial ice makers on the market will require redesign to meet standards at TSL 1. Additionally, for both batch and continuous products, the number of products requiring redesign at this TSL is commensurate with each manufacturer's estimated market share. Twelve manufacturers, including three small businesses, produce equipment that complies with the efficiency levels specified at TSL 1.

At TSL 1, the majority of efficiency gains could be made through swapping purchased components for higher efficiency equivalents. It is expected that very few evaporators and condensers are affected at TSL 1, leading to very low expected industry capital conversion costs totaling only $0.4 million. However, moderate product conversion costs of $17.0 million are expected, as redesigned units will require low levels of engineering design labor, as well as testing for equipment certification.

At TSL 2, DOE estimates impacts on INPV for manufacturers of automatic commercial ice makers to range from −$12.8 million to −$13.6 million, or a change in INPV of −12.6 percent to −13.4 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 97 percent to $0.2 million, compared to the base-case

value of $8.4 million in the year before the compliance date (2017).

At TSL 2, total conversion costs increase to $26.6 million, 53 percent higher than those incurred by industry at TSL 1. DOE estimates that approximately 58 percent of all units on the market will require redesign to meet the standards outlined at TSL 2. As with TSL 1, for batch and continuous commercial ice makers, the number of products requiring redesign at this TSL is largely commensurate with each manufacturer's estimated market share. Ten manufacturers, including three small businesses, produce equipment that complies with the efficiency levels specified at TSL 2.

The majority of redesigns still rely on switching to higher efficiency components, but a limited number of units are expected to require more complex system redesigns including the evaporator and condenser. The increased, but moderate, complexity of these redesigns causes product conversion costs to grow at a slightly higher rate than the additional number of units requiring redesign, resulting in industry-wide product conversion costs totaling $25.4 million. Capital conversion costs continue to remain relatively low at $1.2 million, as most design options considered at TSL 2 can be integrated into production without changes to manufacturing capital.

At TSL 3, DOE estimates impacts on INPV for manufacturers of automatic commercial ice makers to range from −$20.9 million to −$23.9 million, or a change in INPV of −20.5 percent to −23.5 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 180 percent to −$6.7 million, compared to the base-case value of $8.4 million in the year before the compliance date (2017).

At TSL 3, total conversion costs grow significantly to $42.2 million, an increase of 59 percent over those incurred by manufacturers at TSL 2. DOE estimates that approximately 88 percent of all batch products and 75 percent of all continuous products on the market will require redesign to meet this TSL. Six of the 12 manufacturers of batch equipment currently produce batch commercial ice makers that comply with the efficiency levels specified at TSL 3. This includes one small business manufacturer. In contrast, all six manufacturers of continuous commercial ice makers identified produce products that comply with the efficiency levels specified at TSL 3.

The majority of redesigns necessary to meet the standards at TSL 3 involve more complex changes to the evaporator and condenser systems. These complex redesigns result in product conversion costs increasing at a rate higher than simply the additional number of units that require redesign. At TSL 3, the resulting industry product conversion costs total $38.3 million. Additionally, capital conversion costs jump significantly to $3.9 million, as evaporator and condenser redesigns spur investments in tooling for both of these components and the surrounding enclosure.

At TSL 4, DOE estimates impacts on INPV for manufacturers of automatic commercial ice makers to range from −$19.6 million to −$30.5 million, or a change in INPV of −19.2 percent to −30.0 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 227 percent to −$10.7 million, compared to the base-case value of $8.4 million in the year before the compliance date (2017).

At TSL 4, total conversion costs grow to $51.2 million. Relative to the change between TSLs 2 and 3, the increases in conversion costs at TSL 4 are smaller as the percentage of batch and continuous units requiring redesign grows to 96 percent and 77 percent, respectively. These fractions are up from 88 percent and 75 percent, respectively, at TSL 3. Only two manufacturers, including one small business manufacturer, currently produce batch commercial ice makers that comply with the efficiency levels specified at TSL 4. In contrast, all six manufacturers of continuous commercial ice makers identified produce products that comply with the efficiency levels specified at TSL 4.

With very few additional units needing redesigns, costs incurred are mainly incremental, and account for the increasing complexity of condenser and evaporator redesigns. Product conversion costs grow to $44.8 million, 17 percent above those at TSL 3. However, the increasing complexity of redesign does incur greater capital conversion costs, which grow to $6.4 million as additional capital investments are required to modify production lines to manufacture these more complex designs.

At TSL 5, DOE estimates impacts on INPV for manufacturers of automatic commercial ice makers to range from −$19.9 million to −$32.6 million, or a change in INPV of −19.5 percent to −32.0 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 243 percent to −$12.0 million, compared to the base-case value of $8.4 million in the year before the compliance date (2017).

As with TSL 4, only two manufacturers, including one small business manufacturer, currently produce batch commercial ice makers that comply with the efficiency levels specified at TSL 5. For manufacturers of continuous commercial ice makers, this number drops from six to four. As compared to the previous increases in required efficiency between TSLs, the changes between TSL 4 and TSL 5 are minimal. As a result, total conversion costs grow only slightly, rising 6 percent to $54.2 million. This consists of $46.9 million in product conversion costs and $7.3 million in capital conversion costs.

b. Impacts on Direct Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2013 to 2047. DOE used statistical data from the most recent U.S Census Bureau's ''Annual Survey of Manufactures,'' the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

In the GRIM, DOE used the labor content of each product and the manufacturing production costs from the engineering analysis to estimate the annual labor expenditures in the automatic commercial ice maker industry. DOE used information gained through interviews with manufacturers to estimate the portion of the total labor expenditures that is attributable to domestic labor.

The production worker estimates in this section cover workers only up to the line-supervisor level who are directly involved in fabricating and assembling automatic commercial ice makers 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.

The employment impacts shown in Table V.34 represent the potential production employment that could result following new and amended energy conservation standards. The upper end of the results in this table estimates the total potential increase in the number of production workers after amended energy conservation standards. To calculate the total potential increase, DOE assumed that manufacturers continue to produce the

same scope of covered products in domestic production facilities and domestic production is not shifted to lower-labor-cost countries. Because there is a risk of manufacturers evaluating sourcing decisions in response to amended energy conservation standards, the lower end of the range of employment results in Table V.34 includes the estimated total number of U.S. production workers in the industry who could lose their jobs if all existing production were moved outside of the United States. While the results present a range of employment impacts following the compliance date of amended energy conservation standards, the discussion below also includes a qualitative discussion of the likelihood of negative employment impacts at the various TSLs. Finally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 13 of the NOPR TSD.

DOE estimates that in the absence of amended energy conservation standards, there would be 268 domestic production workers involved in manufacturing automatic commercial ice makers in 2018. Using 2011 Census Bureau data and interviews with manufacturers, DOE estimates that approximately 84 percent of automatic commercial ice makers sold in the United States are manufactured domestically. Table V.34 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers in the automatic commercial ice maker industry.

TABLE V.34—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC AUTOMATIC COMMERCIAL ICE MAKER PRODUCTION WORKERS IN 2018

	Base case	1	2	3	4	5
Total Number of Domestic Production Workers in 2018 (without changes in production locations)	268	268	268	269	269	269
Potential Changes in Domestic Production Workers in 2018*		0–(268)	0–(268)	1–(268)	1–(268)	1–(268)

*DOE presents a range of potential employment impacts. Values in parentheses are negative numbers.

All examined TSLs show relatively minor impacts on domestic employment levels relative to total industry employment. At all TSLs, most of the design options analyzed by DOE do not greatly alter the labor content of the final product. For example, the use of higher efficiency compressors or fan motors involve one-time changes to the final product, but do not significantly change the number of steps required for the final assembly. One manufacturer suggested that their domestic production employment levels would only change if market demand contracted following higher overall prices. However, more than one manufacturer suggested that where they already have overseas manufacturing capabilities, they would consider moving additional manufacturing to those facilities if they felt the need to offset a significant rise in materials costs. Provided the changes in materials costs do not support the relocation of manufacturing facilities, one would expect only modest changes to domestic manufacturing employment balancing additional requirements for assembly labor with the effects of price elasticity.

c. Impacts on Manufacturing Capacity

According to the majority of automatic commercial ice maker manufacturers interviewed, amended energy conservation standards that require modest changes to product efficiency will not significantly affect manufacturers' production capacities. Any redesign of automatic commercial ice makers would not change the fundamental assembly of the equipment, but manufacturers do anticipate some potential for additional lead time immediately following standards associated with changes in sourcing of higher efficiency components, which may be supply constrained.

One manufacturer cited the possibility of a 3- to 6-month shutdown in the event that amended standards were set high enough to require retooling of their entire product line. Most of the design options being evaluated are already available on the market as product options. Thus, DOE believes that short of widespread retooling, manufacturers would be able to maintain manufacturing capacity levels and continue to meet market demand under amended energy conservation standards.

d. Impacts on Subgroups of Manufacturers

Small business, low volume, and niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. As discussed in section IV.J, using average cost assumptions to develop an industry cash flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For automatic commercial ice makers, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup: small manufacturers. The SBA defines a ''small business'' as having 750 employees or less for NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes ice-making machinery manufacturing. Based on this definition, DOE identified seven manufacturers in the automatic commercial ice makers industry that are small businesses.

For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this notice and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or 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 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 rulemakings pertaining to equipment efficiency.

During previous stages of this rulemaking, DOE identified a number of requirements in addition to amended energy conservation standards for automatic commercial ice makers. The following section briefly addresses comments DOE received with respect to cumulative regulatory burden and summarizes other key related concerns that manufacturers raised during interviews.

Existing Federal Standards for Automatic Commercial Ice Makers

Several manufacturers commented that they had made substantial investments in order to comply with the previous Federal energy conservation standards for batch style automatic commercial ice makers, which took effect in January 2010. While DOE acknowledges the significant investment on the part of industry, because the proposed compliance date for new and amended standards is 2018, there should be no direct overlap of compliance costs from either standard. The residual financial impact of the previous energy conservation standards manifest themselves in the 2018 standards MIA as the prevailing industry conditions absent new or amended energy conservation standards. This serves as the basis for the base-case INPV.

Certification, Compliance, and Enforcement (CC&E) Rule

Multiple manufacturers expressed concerns about the burden CC&E would impose on the automatic commercial ice maker industry. CC&E requires testing and compliance for a wide array of equipment offerings. One manufacturer cited the increase in testing burden associated with the DOE's new definition of ''basic'' model, which has contributed significantly to the number of models considered to be basic. Manufacturers worry that testing each variation would present a significant testing burden, especially for small business manufacturers.

In addition to costs associated with DOE CC&E requirements, manufacturers cited an array of other certifications as being an additional and substantial burden. Such certifications include codes and standards developed by American Society of Mechanical Engineers (ASME), which include standards for compressors, fasteners, flow measurement, nuclear, environmental control, piping, pressure vessels, pumps, storage tanks, and more.[67] Other critical certification programs for manufacturers of automatic commercial ice makers include those of National Sanitation Foundation (NSF), Underwriters Laboratories (UL), NRCan, and CEC. A new energy efficiency standard put forth by the DOE that requires a complete product redesign will necessitate recertification from the above-mentioned programs. Manufacturers are concerned about the cumulative testing burden associated with such re-certifications.

DOE understands that testing and certification requirements may have a significant impact on manufacturers, and the CC&E burden is identified as a key issue in the MIA. DOE also understands that CC&E requirements can be particularly onerous for manufacturers producing low volume or highly customized equipment. Regarding other certification programs, the DOE again acknowledges the potential burden associated with recertification. However, DOE also recognizes that these programs are voluntary.

EPA and ENERGY STAR

Some manufacturers expressed concerns regarding potential conflicts with the ENERGY STAR certification program. Manitowoc publicly commented that certification by the ENERGY STAR program is very important to their customers for a variety of reasons including the potential for utility rebates and LEED certification. Manitowoc went on to say that if DOE's energy efficiency standard level is raised to the max-tech level, there would be no room for the ENERGY STAR classification and that this could be highly disruptive to the industry (Manitowoc, No. 42 at pp. 15–16). Due to the clear market value of the ENERGY STAR program, manufacturers expressed concern about the additional testing burdens associated with having to re-certify products, or alternatively, having to forfeit market share by offering products that are not ENERGY STAR certified.

DOE realizes that the cumulative effect of several regulations on an industry may significantly increase the burden faced by manufacturers that need to comply with multiple regulations and certification programs from different organizations and levels of government. However, DOE notes that certain standards, such as ENERGY STAR, are optional for manufacturers.

Other Federal Regulations

Manufacturers also expressed concerns regarding the additional burden caused by other Federal regulations, including the upcoming amended energy conservation standards for residential refrigerators and freezers, commercial refrigeration equipment, walk-in coolers and freezers, miscellaneous residential refrigeration products, and cooking products.

DOE recognizes the additional burden faced by manufacturers that produce both automatic commercial ice makers in combination with one or many of the above-mentioned products. Companies that produce a wide range of regulated equipment may be faced with more capital and equipment design development expenditures than competitors with a narrower scope of production. DOE does attempt to quantify the cumulative burden of Federal energy conservation standards on manufacturers in its manufacturer impact analysis (see chapter 12 of TSD). However, DOE cannot consider the quantitative impacts of amended standards that have not yet been finalized, such as those for walk-in coolers and walk-in freezers.

State Regulations

Relating to the CEC codes and standards, one manufacturer noted California's 2020 energy policy goals, including the reduction of greenhouse gas emissions to 1990 levels, as a source of additional burden for automatic commercial ice maker manufacturers. Manufacturers also added that the lead limit guidelines (see, for example, section 4–101.13(C) of the Food Code 2013)[68] put forth by the U.S. Food and Drug Administration (FDA), and adopted as code by all 50 states,[69] carry associated compliance costs. The levels specified by these guidelines have remained unchanged for at least 15 years.

International Regulations

Finally, one manufacturer noted additional burden associated with the European Union (EU) Restriction on Hazardous Substances Directive (RoHS), which restricts the use of six hazardous materials, including lead, mercury, and cadmium, in the manufacture of various types of electronic and electrical equipment.[70]

[67] Information about ASME codes and standards can be obtained at: *www.asme.org/kb/standards/standards.*

[68] *http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm*).

[69] *http://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FederalStateCooperativePrograms/UCM230336.pdf.*

[70] Information on EU RoHS can be found at: *www.bis.gov.uk/nmo/enforcement/rohs-home.*

DOE discusses these and other requirements, and includes the full details of the cumulative regulatory burden analysis, in chapter 12 of the NOPR TSD.

3. National Impact Analysis

a. Amount and Significance of Energy Savings

DOE estimated the NES by calculating the difference in annual energy consumption for the base-case scenario and standards-case scenario at each TSL for each equipment class and summing up the annual energy savings for the automatic commercial ice maker equipment purchased during the 30-year 2018 to 2047 analysis period. Energy impacts include the 30-year period, plus the life of equipment purchased in the last year of the analysis, or roughly 2018 to 2057. The energy consumption calculated in the NIA is full-fuel-cycle (FFC) energy, which quantifies savings beginning at the source of energy production. DOE also reports primary or source energy that takes into account losses in the generation and transmission of electricity. FFC and primary energy are discussed in section IV.H.

Table V.35 presents the source NES for all equipment classes at each TSL and the sum total of NES for each TSL. Table V.36 presents the energy savings at each TSL for each equipment class in the form of percentage of the cumulative energy use of the equipment stock in the base-case scenario.

TABLE V.35—CUMULATIVE NATIONAL ENERGY SAVINGS AT SOURCE FOR EQUIPMENT PURCHASED IN 2018–2047

Equipment class	Standard level *, **				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.002	0.004	0.010	0.010	0.013
IMH–W–Med–B	0.006	0.006	0.009	0.013	0.014
IMH–W–Large–B ***	0.001	0.001	0.001	0.002	0.003
IMH–W–Large–B1	0.001	0.001	0.001	0.002	0.002
IMH–W–Large–B2	0.000	0.000	0.000	0.001	0.001
IMH–A–Small–B	0.017	0.032	0.076	0.099	0.105
IMH–A–Large–B ***	0.024	0.045	0.095	0.122	0.122
IMH–A–Large–B1	0.020	0.040	0.086	0.107	0.107
IMH–A–Large–B2	0.005	0.005	0.009	0.015	0.015
RCU–Large–B ***	0.013	0.013	0.030	0.046	0.047
RCU–Large–B1	0.012	0.012	0.028	0.043	0.045
RCU–Large–B2	0.001	0.001	0.002	0.003	0.003
SCU–W–Large–B	0.000	0.000	0.000	0.000	0.000
SCU–A–Small–B	0.002	0.013	0.024	0.037	0.037
SCU–A–Large–B	0.002	0.010	0.017	0.022	0.022
IMH–A–Small–C	0.002	0.003	0.005	0.008	0.012
IMH–A–Large–C	0.001	0.003	0.006	0.008	0.008
SCU–A–Small–C	0.001	0.004	0.007	0.007	0.011
Total	0.072	0.134	0.281	0.374	0.395

* A value equal to 0.000 means the NES rounds to less than 0.001 quads.
** Numbers may not add to totals due to rounding.
*** IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

TABLE V.36—CUMULATIVE ENERGY SAVINGS BY TSL AS A PERCENTAGE OF CUMULATIVE BASELINE ENERGY USAGE OF AUTOMATIC COMMERCIAL ICE MAKER EQUIPMENT PURCHASED IN 2018–2047

Equipment class	Base case energy usage	TSL savings as percent of baseline usage				
		TSL 1 *(%)*	TSL 2 *(%)*	TSL 3 *(%)*	TSL 4 *(%)*	TSL 5 *(%)*
IMH–W–Small–B	0.062	4	7	16	16	21
IMH–W–Med–B	0.089	6	6	10	15	16
IMH–W–Large–B *	0.026	6	6	6	9	10
IMH–W–Large–B1	0.017	7	7	7	10	11
IMH–W–Large–B2	0.009	3	3	3	7	8
IMH–A–Small–B	0.463	4	7	16	21	23
IMH–A–Large–B *	0.635	4	7	15	19	19
IMH–A–Large–B1	0.490	4	8	17	22	22
IMH–A–Large–B2	0.145	3	3	6	11	11
RCU–Large–B *	0.357	4	4	8	13	13
RCU–Large–B1	0.333	4	4	8	13	13
RCU–Large–B2	0.024	2	2	7	11	11
SCU–W–Large–B	0.003	2	5	9	14	14
SCU–A–Small–B	0.138	1	9	18	27	27
SCU–A–Large–B	0.092	2	10	19	24	24
IMH–A–Small–C	0.068	2	5	8	12	17
IMH–A–Large–C	0.041	4	6	14	19	19
SCU–A–Small–C	0.073	2	6	9	9	16
Total	2.047	4	7	14	18	19

* IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

Table V.37 presents energy savings at each TSL for each equipment class with the FFC adjustment. The NES increases from 0.073 quads at TSL 1 to 0.401 quads at TSL 5.

TABLE V.37—CUMULATIVE NATIONAL ENERGY SAVINGS INCLUDING FULL-FUEL-CYCLE FOR EQUIPMENT PURCHASED IN 2018–2047

Equipment class	Standard level ***				
	TSL 1	TSL 2	TSL 3	TSL 4	TS L5
IMH–W–Small–B	0.002	0.004	0.010	0.010	0.013
IMH–W–Med–B	0.006	0.006	0.009	0.014	0.015
IMH–W–Large–B ***	0.001	0.001	0.001	0.002	0.003
IMH–W–Large–B1	0.001	0.001	0.001	0.002	0.002
IMH–W–Large–B2	0.000	0.000	0.000	0.001	0.001
IMH–A–Small–B	0.017	0.033	0.077	0.100	0.107
IMH–A–Large–B ***	0.025	0.045	0.096	0.124	0.124
IMH–A–Large–B1	0.020	0.041	0.087	0.108	0.108
IMH–A–Large–B2	0.005	0.005	0.009	0.016	0.016
RCU–Large–B ***	0.013	0.013	0.030	0.046	0.048
RCU–Large–B1	0.013	0.013	0.029	0.044	0.045
RCU–Large–B2	0.001	0.001	0.002	0.003	0.003
SCU–W–Large–B	0.000	0.000	0.000	0.000	0.000
SCU–A–Small–B	0.002	0.013	0.025	0.038	0.038
SCU–A–Large–B	0.002	0.010	0.018	0.022	0.022
IMH–A–Small–C	0.002	0.003	0.006	0.008	0.012
IMH–A–Large–C	0.001	0.003	0.006	0.008	0.008
SCU–A–Small–C	0.001	0.004	0.007	0.007	0.012
Total	0.073	0.136	0.286	0.380	0.401

* A value equal to 0.000 means the NES rounds to less than 0.001 quads.
** Numbers may not add to totals due to rounding.
*** IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

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. 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 revised standards.[71] We would note that the review timeframe established in EPCA generally does not overlap with the product lifetime, product manufacturing cycles or other factors specific to automatic commercial ice makers. Thus, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology. The NES results based on a 9-year analysis period are presented in Table V.38. The impacts are counted over the lifetime of equipment purchased in 2018–2026

TABLE V.38—NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR 9-YEAR ANALYSIS PERIOD FOR EQUIPMENT PURCHASED IN 2018–2026

Equipment class	Standard level ***				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.001	0.001	0.003	0.003	0.004
IMH–W–Med–B	0.002	0.002	0.003	0.004	0.004
IMH–W–Large–B ***	0.000	0.000	0.000	0.001	0.001
IMH–W–Large–B1	0.000	0.000	0.000	0.000	0.001
IMH–W–Large–B2	0.000	0.000	0.000	0.000	0.000
IMH–A–Small–B	0.005	0.009	0.021	0.028	0.029
IMH–A–Large–B ***	0.007	0.012	0.026	0.034	0.034
IMH–A–Large–B1	0.005	0.011	0.024	0.030	0.030
IMH–A–Large–B2	0.001	0.001	0.003	0.004	0.004
RCU–Large–B ***	0.004	0.004	0.008	0.013	0.013
RCU–Large–B1	0.003	0.003	0.008	0.012	0.012

[71] For automatic commercial ice makers, DOE is required to review standards at least every five years after the effective date of any amended standards. (42 U.S.C. 6313(d)(3)(B)) If new standards are promulgated, EPCA requires DOE to provide manufacturers a minimum of 3 and a maximum of 5 years to comply with the standards. (42 U.S.C. 6313(d)(3)(C)) In addition, for certain other types of commercial equipment that are not specified in 42 U.S.C. 6311(1)(B)–(G), EPCA requires DOE to review its standards at least once every 6 years (42 U.S.C. 6295(m)(1) and 6316(a)), and either a 3-year or a 5-year period after any new standard is promulgated before compliance is required. (42 U.S.C. 6295(m)(4) and 6316(a)) As a result, DOE's standards for automatic commercial ice makers can be expected to be in effect for 8 to 10 years between compliance dates, and its standards governing certain other commercial equipment, the period is 9 to 11 years. A 9-year analysis was selected as representative of the time between standard revisions.

TABLE V.38—NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR 9-YEAR ANALYSIS PERIOD FOR EQUIPMENT PURCHASED IN 2018–2026—Continued

Equipment class	Standard level ***				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
RCU–Large–B2	0.000	0.000	0.000	0.001	0.001
SCU–W–Large–B	0.000	0.000	0.000	0.000	0.000
SCU–A–Small–B	0.000	0.004	0.007	0.010	0.010
SCU–A–Large–B	0.001	0.003	0.005	0.006	0.006
IMH–A–Small–C	0.000	0.001	0.002	0.002	0.003
IMH–A–Large–C	0.000	0.001	0.002	0.002	0.002
SCU–A–Small–C	0.000	0.001	0.002	0.002	0.003
Total	0.020	0.037	0.079	0.104	0.110

* A value equal to 0.000 means the NES rounds to less than 0.001 quads.
** Numbers may not add to totals due to rounding.
*** IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

b. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV to the Nation of the total savings for the customers that would result from potential standards at each TSL. In accordance with OMB guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital, including corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. In addition, DOE used the 3-percent rate to capture the potential effects of amended standards on private consumption. This rate represents the rate at which society discounts future consumption flows to their present value. It can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on Treasury notes minus annual rate of change in the CPI), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V.39 and Table V.40 show the customer NPV results for each of the TSLs DOE considered for automatic commercial ice makers at both 7-percent and 3-percent discount rates. In each case, the impacts cover the expected lifetime of equipment purchased from 2018–2047. Detailed NPV results are presented in chapter 10 of the NOPR TSD.

The NPV results at a 7-percent discount rate for TSL 5 were negative for three equipment classes and significantly lower than the TSL 3 results for several other classes. This is consistent with the results of LCC analysis results for TSL 5, which showed significant increase in LCC and significantly higher PBPs that were in some cases greater than the average equipment lifetimes. Efficiency levels for TSL 4 were chosen to correspond to the highest efficiency level with a positive NPV for all classes at a 7-percent discount rate. Similarly, the criteria for choice of efficiency levels for TSL 3, TSL 2, and TSL 1 were such that the NPV values for all the equipment classes show positive values. The criterion for TSL 3 was to select efficiency levels with the highest NPV at a 7-percent discount rate. Consequently, the total NPV for automatic commercial ice makers was highest for TSL 3, with a value of $0.791 billion (2012$) at a 7-percent discount rate. TSL 4 showed the second highest total NPV, with a value of $0.484 billion (2012$) at a 7-percent discount rate. TSL 1, TSL 2 and TSL 5 have a total NPV lower than TSL 3 or 4.

TABLE V.39—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2018–2047

[2012$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.006	0.011	0.025	0.025	(0.002)
IMH–W–Med–B	0.016	0.016	0.025	0.017	0.019
IMH–W–Large–B **	0.004	0.004	0.004	0.003	0.003
IMH–W–Large–B1	0.003	0.003	0.003	0.002	0.002
IMH–W–Large–B2	0.001	0.001	0.001	0.001	0.001
IMH–A–Small–B	0.043	0.080	0.177	0.046	0.058
IMH–A–Large–B **	0.070	0.127	0.297	0.256	0.256
IMH–A–Large–B1	0.057	0.113	0.274	0.236	0.236
IMH–A–Large–B2	0.014	0.014	0.023	0.020	0.020
RCU–Large–B **	0.038	0.038	0.082	0.073	0.075
RCU–Large–B1	0.036	0.036	0.078	0.070	0.072
RCU–Large–B2	0.002	0.002	0.004	0.004	0.004
SCU–W–Large–B	0.001	0.001	0.001	0.000	0.000
SCU–A–Small–B	0.004	0.029	0.085	0.012	0.012
SCU–A–Large–B	0.004	0.039	0.052	0.021	0.021
IMH–A–Small–C	0.004	0.009	0.014	0.011	(0.018)
IMH–A–Large–C	0.004	0.007	0.016	0.007	0.007

TABLE V.39—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2018–2047—Continued

[2012$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
SCU–A–Small–C	0.004	0.009	0.013	0.013	(0.062)
Total	0.198	0.368	0.791	0.484	0.370

* A value equal to 0.000 means the NPV rounds to less than $0.001 (2012$). Values in parentheses are negative numbers.
** IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

TABLE V.40—NET PRESENT VALUE AT A 3-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2018–2047

[2012$]

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.013	0.023	0.057	0.057	0.010
IMH–W–Med–B	0.034	0.034	0.054	0.042	0.047
IMH–W–Large–B**	0.009	0.009	0.009	0.007	0.008
IMH–W–Large–B1	0.007	0.007	0.007	0.006	0.006
IMH–W–Large–B2	0.002	0.002	0.002	0.001	0.002
IMH–A–Small–B	0.094	0.176	0.394	0.163	0.190
IMH–A–Large–B**	0.152	0.275	0.653	0.596	0.596
IMH–A–Large–B1	0.123	0.245	0.602	0.546	0.546
IMH–A–Large–B2	0.030	0.030	0.051	0.050	0.050
RCU–Large–B **	0.081	0.081	0.178	0.174	0.179
RCU–Large–B1	0.078	0.078	0.169	0.165	0.170
RCU–Large–B2	0.004	0.004	0.009	0.009	0.009
SCU–W–Large–B	0.001	0.002	0.002	0.001	0.001
SCU–A–Small–B	0.009	0.064	0.190	0.062	0.062
SCU–A–Large–B	0.010	0.086	0.118	0.062	0.062
IMH–A–Small–C	0.009	0.019	0.031	0.027	(0.028)
IMH–A–Large–C	0.009	0.016	0.034	0.018	0.018
SCU–A–Small–C	0.008	0.021	0.030	0.030	(0.114)
Total	0.430	0.806	1.751	1.238	1.032

* A value equal to 0.000 means the NPV rounds to less than $0.001 (2012$). Values in parentheses are negative numbers.
** IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B results are the sum of the results for the 2 typical units denoted by B1 and B2.

The NPV results based on the aforementioned 9-year analysis period are presented in Table V.41 and Table V.42. The impacts are counted over the lifetime of equipment purchased in 2018–2026. 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.41—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR 9-YEAR ANALYSIS PERIOD FOR EQUIPMENT PURCHASED IN 2018–2026

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.003	0.005	0.012	0.012	(0.001)
IMH–W–Med–B	0.008	0.008	0.012	0.008	0.009
IMH–W–Large–B	0.002	0.002	0.002	0.001	0.002
IMH–W–Large–B–1	0.002	0.002	0.002	0.001	0.001
IMH–W–Large–B–2	0.000	0.000	0.000	0.000	0.000
IMH–A–Small–B	0.021	0.039	0.086	0.023	0.029
IMH–A–Large–B	0.034	0.062	0.143	0.123	0.123
IMH–A–Large–B–1	0.028	0.055	0.132	0.113	0.113
IMH–A–Large–B–2	0.007	0.007	0.011	0.010	0.010
RCU–Large–B	0.018	0.018	0.040	0.036	0.037
RCU–Large–B–1	0.017	0.017	0.038	0.034	0.035
RCU–Large–B–2	0.001	0.001	0.002	0.002	0.002
SCU–W–Large–B	0.000	0.000	0.001	0.000	0.000
SCU–A–Small–B	0.002	0.014	0.040	0.005	0.005
SCU–A–Large–B	0.002	0.018	0.025	0.010	0.010
IMH–A–Small–C	0.002	0.004	0.007	0.005	(0.009)

TABLE V.41—NET PRESENT VALUE AT A 7-PERCENT DISCOUNT RATE FOR 9-YEAR ANALYSIS PERIOD FOR EQUIPMENT PURCHASED IN 2018–2026—Continued

Equipment class	Standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–A–Large–C	0.002	0.004	0.008	0.003	0.003
SCU–A–Small–C	0.002	0.005	0.006	0.006	(0.031)
Total	0.096	0.179	0.381	0.233	0.177

* A value equal to 0.000 means the NPV rounds to less than $0.001 (2012$). Values in parentheses are negative numbers.

TABLE V.42—NET PRESENT VALUE AT A 3-PERCENT DISCOUNT RATE FOR 9-YEAR ANALYSIS PERIOD FOR EQUIPMENT PURCHASED IN 2018–2026

Equipment class	Standard level*				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0.005	0.008	0.020	0.020	0.003
IMH–W–Med–B	0.012	0.012	0.019	0.015	0.017
IMH–W–Large–B	0.003	0.003	0.003	0.003	0.003
IMH–W–Large–B–1	0.002	0.002	0.002	0.002	0.002
IMH–W–Large–B–2	0.001	0.001	0.001	0.001	0.001
IMH–A–Small–B	0.034	0.063	0.141	0.058	0.068
IMH–A–Large–B	0.054	0.098	0.230	0.209	0.209
IMH–A–Large–B–1	0.044	0.088	0.211	0.191	0.191
IMH–A–Large–B–2	0.011	0.011	0.018	0.018	0.018
RCU–Large–B	0.029	0.029	0.064	0.062	0.064
RCU–Large–B–1	0.028	0.028	0.060	0.059	0.061
RCU–Large–B–2	0.001	0.001	0.003	0.003	0.003
SCU–W–Large–B	0.000	0.001	0.001	0.000	0.000
SCU–A–Small–B	0.003	0.023	0.065	0.020	0.020
SCU–A–Large–B	0.003	0.030	0.041	0.021	0.021
IMH–A–Small–C	0.003	0.007	0.011	0.010	(0.010)
IMH–A–Large–C	0.003	0.006	0.012	0.006	0.006
SCU–A–Small–C	0.003	0.007	0.010	0.010	(0.042)
Total	0.153	0.287	0.617	0.434	0.359

*A value equal to 0.000 means the NPV rounds to less than $0.001 (2012$). Values in parentheses are negative numbers.

c. Water Savings

In analyzing energy-saving design options for batch type ice makers, one option had the additional impact of reducing potable water usage for some types of batch type ice makers. The potable water savings are identified on Table V.43.

TABLE V.43—POTABLE WATER SAVINGS

Equipment class	National water savings by standard level*,** *million gallons*				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
IMH–W–Small–B	0	0	3,699	3,699	3,699
IMH–W–Med–B	0	0	0	0	0
IMH–W–Large–B	0	0	0	0	0
IMH–W–Large–B–1	0	0	0	0	0
IMH–W–Large–B–2	0	0	0	0	0
IMH–A–Small–B	0	0	0	0	0
IMH–A–Large–B	0	0	20,753	20,753	20,753
IMH–A–Large–B–1	0	0	20,753	20,753	20,753
IMH–A–Large–B–2	0	0	0	0	0
RCU–063–Large–B	0	0	0	0	0
RCU–064–Large–B–1	0	0	0	0	0
RCU–065–Large–B–2	0	0	0	0	0
SCU–W–Large–B	141	141	141	141	141
SCU–A–Small–B	0	0	14,391	14,391	14,391
SCU–A–Large–B	0	6,424	6,424	6,424	6,424
IMH–A–Small–C	0	0	0	0	0
IMH–A–Large–C	0	0	0	0	0
SCU–A–Small–C	0	0	0	0	0

TABLE V.43—POTABLE WATER SAVINGS—Continued

Equipment class	National water savings by standard level*,** million gallons				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Total	141	6,565	45,407	45,407	45,407

d. Employment Impacts

In addition to the direct impacts on manufacturing employment discussed in section V.B.2, DOE develops general estimates of the indirect employment impacts of proposed standards on the economy. As discussed above, DOE expects amended energy conservation standards for automatic commercial ice makers to reduce energy bills for commercial customers, and the resulting net savings to be redirected to other forms of economic activity. DOE also realizes that these shifts in spending and economic activity by automatic commercial ice maker owners 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 expenditure levels (the income effect) that occur due to the imposition of amended standards. These impacts may affect a variety of businesses not directly involved in the decision to make, operate, or pay the utility bills for automatic commercial ice makers. To estimate these indirect economic effects, DOE used an input/output model of the U.S. economy using U.S. Department of Commerce, Bureau of Economic Analysis (BEA) and BLS data (as described in section IV.N of this notice; see chapter 16 of the NOPR TSD for more details).

In this input/output model, the dollars saved on utility bills from more-efficient automatic commercial ice makers are concentrated in economic sectors that create more jobs than are lost in electric and water utilities sectors when spending is shifted from electricity and/or water to other products and services. Thus, the proposed amended energy conservation standards for automatic commercial ice makers are likely to slightly increase the net demand for labor in the economy. However, the net increase in jobs might be offset by other, unanticipated effects on employment. Neither the BLS data nor the input/output model used by DOE includes the quality of jobs. As shown in Table V.44, DOE estimates that net indirect employment impacts from a proposed automatic commercial ice makers amended standard are small relative to the national economy.

TABLE V.44—NET SHORT-TERM CHANGE IN EMPLOYMENT

Trial standard level	2018	2022
1	19 to 20	100 to 101.
2	36 to 40	192 to 196.
3	75 to 87	431 to 442.
4	44 to 91	506 to 552.
5	34 to 90	518 to 572.

4. Impact on Utility or Performance of Equipment

In performing the engineering analysis, DOE considers design options that would not lessen the utility or performance of the individual classes of equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(e)(1)) As presented in the screening analysis (chapter 4 of the NOPR TSD), DOE eliminates from consideration any design options that reduce the utility of the equipment. For this notice, DOE proposes that none of the TSLs considered for automatic commercial ice makers reduce the utility or performance of the equipment.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition likely to result from amended standards. It directs the Attorney General of the United States (Attorney General) to determine in writing the impact, if any, of any lessening of competition likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6313(d)(4)) To assist the Attorney General in making such a determination, DOE provided the DOJ with copies of this notice and the TSD for review. During MIA interviews, domestic manufacturers indicated that foreign manufacturers have begun to enter the automatic commercial ice maker industry, but not in significant numbers. Manufacturers also stated that consolidation has occurred among automatic commercial ice makers manufacturers in recent years. Interviewed manufacturers believe that these trends may continue in this market even in the absence of amended standards.

DOE does not believe that amended standards would result in domestic firms moving their production facilities outside the United States. The majority of automatic commercial ice makers are manufactured in the United States and, during interviews, manufacturers in general indicated they would modify their existing facilities to comply with amended energy conservation standards.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the equipment subject to today's NOPR is likely to improve the security of the Nation's energy system by reducing overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in national generating capacity for the TSLs that DOE considered in this rulemaking.

Energy savings from amended standards for automatic commercial ice makers could also produce environmental benefits in the form of reduced emissions of air pollutants and GHGs associated with electricity production. Table V.45 provides DOE's estimate of cumulative CO_2, NO_X, Hg, N_2O, CH_4 and SO_2 emissions reductions projected to result from the TSLs considered in this rule. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.45—SUMMARY OF EMISSIONS REDUCTION ESTIMATED FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS

[Cumulative for equipment purchased in 2018–2047]

	TSL				
	1	2	3	4	5
Power Sector and Site Emissions					
CO_2 (*million metric tons*)	3.50	6.52	13.68	18.19	19.19
NO_X (*thousand tons*)	−0.89	−1.66	−3.49	−4.64	−4.89
Hg (*tons*)	0.01	0.01	0.02	0.03	0.03
N_2O (*thousand tons*)	0.08	0.15	0.31	0.41	0.43
CH_4 (*thousand tons*)	0.47	0.88	1.84	2.45	2.58
SO_2 (*thousand tons*)	5.31	9.89	20.76	27.60	29.12
Upstream Emissions					
CO_2 (*million metric tons*)	0.23	0.42	0.89	1.18	1.24
NO_X (*thousand tons*)	3.11	5.80	12.18	16.19	17.08
Hg (*tons*)	0.000	0.000	0.000	0.001	0.001
N_2O (*thousand tons*)	0.00	0.00	0.01	0.01	0.01
CH_4 (*thousand tons*)	18.89	35.22	73.93	98.30	103.68
SO_2 (*thousand tons*)	0.05	0.09	0.19	0.25	0.27
Total Emissions					
CO_2 (*million metric tons*)	3.72	6.94	14.57	19.37	20.43
NO_X (*thousand tons*)	2.22	4.14	8.69	11.56	12.19
Hg (*tons*)	0.01	0.01	0.02	0.03	0.03
N_2O (*thousand tons*)	0.08	0.15	0.32	0.42	0.45
CH_4 (*thousand tons*)	19.36	36.09	75.77	100.75	106.27
SO_2 (*thousand tons*)	5.35	9.98	20.95	27.86	29.38

As part of the analysis for this NOPR, 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. As discussed in section IV.L, DOE used values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The four SCC values for CO_2 emissions reductions in 2015, expressed in 2012$, are $11.8/ton, $39.7/ton, $61.2/ton, and $117.0/ton. These values for later years are higher due to increasing emissions-related costs as the magnitude of projected climate change is expected to increase.

Table V.46 presents the global value of CO_2 emissions reductions at each TSL. 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.46—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

TSL	SCC Scenario*			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
	million 2012$			
Power Sector and Site Emissions				
1	24.6	111.2	176.2	342.8
2	45.9	207.3	328.5	639.0
3	96.3	435.2	689.5	1,341.5
4	128.0	578.6	916.8	1,783.6
5	135.1	610.3	967.0	1,881.4
Upstream Emissions				
1	1.5	7.0	11.2	21.7
2	2.8	13.1	20.8	40.4
3	6.0	27.5	43.7	84.9
4	7.9	36.5	58.1	112.8

TABLE V.46—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS—Continued

TSL	SCC Scenario*			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
5	8.4	38.5	61.3	119.0
Total Emissions				
1	26.1	118.2	187.4	364.5
2	48.7	220.4	349.3	679.5
3	102.3	462.6	733.2	1,426.3
4	136.0	615.1	974.9	1,896.4
5	143.4	648.8	1,028.3	2,000.4

*For each of the four cases, the corresponding SCC value for emissions in 2015 is $11.8, $39.7, $61.2 and $117.0 per metric ton (2012$).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to develop rapidly. Thus, any value placed in this NOPR on reducing CO_2 emissions 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 NOPR 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 NOPR the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emission reductions anticipated to result from amended automatic commercial ice makers standards. Table V.47 presents the present value of cumulative NO_X emissions reductions for each TSL calculated using the average dollar-per-ton values and 7-percent and 3-percent discount rates.

TABLE V.47—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

TSL	3% Discount rate	7% Discount rate
	million 2012$	
Power Sector and Site Emissions*		
1	−1.8	−1.3
2	−3.4	−2.4
3	−7.2	−5.0
4	−9.5	−6.6
5	−10.1	−7.0
Upstream Emissions		
1	4.3	2.1
2	8.0	3.8
3	16.8	8.0
4	22.3	10.7
5	23.6	11.3
Total Emissions		
1	2.5	0.8
2	4.6	1.4
3	9.6	3.0
4	12.8	4.0
5	13.5	4.3

The NPV of the monetized benefits associated with emission reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this NOPR. Table V.48 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 table correspond to the four scenarios for the valuation of CO_2 emission reductions presented in section IV.L.

TABLE V.48—AUTOMATIC COMMERCIAL ICE MAKERS TSLS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $11.8/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $39.7/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $61.2/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $117.0/metric ton CO_2* and Medium Value for NO_X**
	billion 2012$			
1	*0.458*	*0.550*	*0.620*	*0.797*
2	*0.859*	*1.031*	*1.160*	*1.490*
3	*1.863*	*2.223*	*2.494*	*3.187*
4	*1.387*	*1.866*	*2.226*	*3.148*

TABLE V.48—AUTOMATIC COMMERCIAL ICE MAKERS TSLS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS—Continued

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $11.8/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $39.7/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $61.2/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $117.0/metric ton CO_2* and Medium Value for NO_X**
5	*1.189*	*1.694*	*2.074*	*3.046*
TSL	Consumer NPV at 7% discount rate added with:			
	SCC Value of $11.8/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $39.7/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $61.2/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $117.0/metric ton CO_2* and Medium Value for NO_X**
	billion 2012$			
1	*0.224*	*0.317*	*0.386*	*0.563*
2	*0.418*	*0.590*	*0.719*	*1.049*
3	*0.896*	*1.257*	*1.527*	*2.220*
4	*0.624*	*1.103*	*1.463*	*2.385*
5	*0.518*	*1.023*	*1.403*	*2.375*

* These label values represent the global SCC in 2015, in 2012$. The present values have been calculated with scenario-consistent discount rates. For NO_X emissions, each case uses the medium value, which corresponds to $2,639 per ton.

Although adding the value of customer savings to the values of emission reductions provides a valuable perspective, the following should be considered: (1) the national customer savings are domestic U.S. customer monetary savings found in market transactions, while the values of emission reductions are based on estimates of marginal social costs, which, in the case of CO_2, are based on a global value; and (2) the assessments of customer savings and emission-related benefits are performed with different computer models, leading to different time frames for analysis. For automatic commercial ice makers, the present value of national customer savings is measured for the period in which units shipped (2018–2047) continue to operate. However, the time frames of the benefits associated with the emission reductions differ. For example, the value of CO_2 emission reductions in a given year reflects the present value of all future climate-related impacts due to emitting a ton of CO_2 in that year, out to the year 2100.

7. Other Factors

EPCA allows the Secretary, in determining whether a proposed 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) and 6313(d)(4)) DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types, who may be disproportionately affected by any amended national energy conservation standard level. DOE also considered the reduction in generation capacity that could result from the imposition of any amended national energy conservation standard level.

DOE carried out a RIA, as described in the NOPR TSD chapter 17, to study the impact of certain non-regulatory alternatives that may encourage customers to purchase higher efficiency equipment and, thus, achieve NES. The two major alternatives identified by DOE are customer rebates and customer tax credits. DOE surveyed the various rebate programs available in the United States. Typically, rebates are offered for commercial sector businesses that purchase energy-efficient automatic commercial ice makers, typically, machines that qualify either for ENERGY STAR or CEE certification. Rebates offered range from $40 to several hundred dollars, depending on the size and type of ice maker. Based on the incremental costs DOE estimated for TSL 1 (equivalent to the ENERGY STAR targets that were in existence until early in 2013), the rebates offered are sufficient to cover the incremental costs of meeting the ENERGY STAR levels. Given the range of rebates offered, DOE elected to model rebates of equivalent to 60 percent of the full incremental cost of the upgrades.

For the tax credits scenario, DOE did not find a suitable program to model the scenario. From a consumer perspective, the most important difference between rebate and tax credit programs is that a rebate can be obtained relatively quickly, whereas receipt of tax credits is delayed until income taxes are filed or a tax refund is provided by the IRS. As with consumer rebates, DOE assumed that consumer tax credits paid 60 percent of the incremental product price, but estimated a different response rate. The delay in reimbursement makes tax credits less attractive than rebates; consequently, DOE estimated a response rate that is 80 percent of that for rebate programs.

Table V.49 and Table V.50 show the NES and NPV, respectively, for the non-regulatory alternatives analyzed. For comparison, the table includes the results of the NES and NPV for TSL 3, the proposed energy conservation standard. Energy savings are expressed in quads in terms of primary or source energy, which includes generation and transmission losses from electricity utility sector.

TABLE V.49—CUMULATIVE NES OF NON-REGULATORY ALTERNATIVES COMPARED TO THE PROPOSED STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

Policy alternatives	Cumulative Primary NES *quads*
No new regulatory action	0
Customer tax credits	0.145
Customer rebates	0.190
Voluntary energy efficiency targets	0
Early replacement	0
Proposed standards, primary energy (TSL 3)	0.281

TABLE V.50—CUMULATIVE NPV OF NON-REGULATORY ALTERNATIVES COMPARED TO THE PROPOSED STANDARDS FOR AUTOMATIC COMMERCIAL ICE MAKERS

Policy alternatives	Cumulative net present value *billion 2012$*	
	7% Discount	3% Discount
No new regulatory action	0	0
Customer tax credits	0.520	1.011
Customer rebates	0.678	1.319
Voluntary energy efficiency targets	0	0
Early replacement	0	0
Proposed standards (TSL 3)	0.791	1.751

As shown above, none of the policy alternatives DOE examined would achieve close to the amount of energy or monetary savings that could be realized under the proposed amended standard. Also, implementing either tax credits or customer rebates would incur initial and/or administrative costs that were not considered in this analysis.

C. Proposed Standard

DOE recognizes that when it considers amendments to the standards, it is subject to the EPCA requirement that any new or amended energy conservation standard for any type (or class) of covered product 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) and 6313(d)(4)) In determining whether a proposed standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i) and 6313(d)(4)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(d)(4))

DOE considered the impacts of standards at each TSL, beginning with the maximum technologically feasible level, to determine whether that level met the evaluation criteria. If 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.

DOE discusses the benefits and/or burdens of each TSL in the following sections. DOE bases its discussion on quantitative analytical results for each TSL including NES, NPV (discounted at 7 and 3 percent), emission reductions, INPV, LCC, and customers' installed price increases. Beyond the quantitative results, DOE also considers other burdens and benefits that affect economic justification, including how technological feasibility, manufacturer costs, and impacts on competition may affect the economic results presented. Table V.51, Table V.52, Table V.53 and Table V.54 present a summary of the results of DOE's quantitative analysis for each TSL. Results in Table V.51 are impacts from equipment purchased in the period from 2018–2047. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification of certain customer subgroups that are disproportionately affected by the proposed standards. Section V.B.7 presents the estimated impacts of each TSL for these subgroups.

TABLE V.51—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: NATIONAL IMPACTS*

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative National Energy Savings 2018 through 2047 *quads*					
Undiscounted values	0.073	0.136	0.286	0.380	0.401
Cumulative National Water Savings 2018 through 2047 *billion gallons*					
Undiscounted values	0.1	6.6	45.4	45.4	45.4
Cumulative NPV of Customer Benefits 2018 through 2047 *2012$ billion*					
3% discount rate	0.430	0.806	1.751	1.238	1.032

TABLE V.51—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: NATIONAL IMPACTS*—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
7% discount rate	0.198	0.368	0.791	0.484	0.370
Industry Impacts					
Change in Industry NPV (2012$ million).	(8.4) to (8.7)	(12.8) to (13.6)	(20.9) to (23.9)	(19.6) to (30.5)	(19.9) to (32.6)
Change in Industry NPV (%)	(8.2) to (8.5)	(12.6) to (13.4)	(20.5) to (23.5)	(19.2) to (30.0)	(19.5) to (32.0)
Cumulative Emissions Reductions 2018 through 2047**					
CO_2 (MMt)	3.72	6.94	14.57	19.37	20.43
NO_X (kt)	2.22	4.14	8.69	11.56	12.19
Hg (t)	0.01	0.01	0.02	0.03	0.03
N_2O (*kt*)	0.08	0.15	0.32	0.42	0.45
N_2O (kt CO_2eq)	24.28	45.26	95.01	126.32	133.25
CH_4 (*kt*)	19.36	36.09	75.77	100.75	106.27
CH_4 (*kt* CO_2eq)	484.06	902.37	1894.29	2518.64	2656.69
SO_2 (*kt*)	5.35	9.98	20.95	27.86	29.38
Monetary Value of Cumulative Emissions Reductions 2018 through 2047†					
CO_2 (2012$ billion)	0.026 to 0.364	0.049 to 0.679	0.102 to 1.426	0.136 to 1.896	0.143 to 2.0
NO_X—3% discount rate (2012$ million).	2.5	4.6	9.6	12.8	13.5
NO_X—7% discount rate (2012$ million).	0.8	1.4	3.0	4.0	4.3
Employment Impacts					
Net Change in Indirect Domestic Jobs by 2022.	100 to 101	192 to 196	431 to 442	506 to 552	518 to 572

* Values in parentheses are negative numbers.

** "MMt" stands for million metric tons; "kt" stands for kilotons; "t" stands for tons. CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

† Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions. Economic value of NO_X reductions is based on estimates at $2,639/ton.

TABLE V.52—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: MEAN LCC SAVINGS

[2012$]

Equipment class	Standard level				
	TSL1	TSL2	TSL3	TSL4	TSL5
IMH–W–Small–B	$199	$215	$328	$328	$49
IMH–W–Med–B	464	464	587	405	460
IMH–W–Large–B*	833	833	833	550	582
IMH–W–Large–B1	701	701	701	583	607
IMH–W–Large–B2	1,260	1,260	1,260	442	500
IMH–A–Small–B	254	259	396	170	198
IMH–A–Large–B*	648	633	1,127	994	994
IMH–A–Large–B1	590	572	1,168	1,062	1,062
IMH–A–Large–B2	960	960	908	627	627
RCU–Large–B*	875	875	983	870	897
RCU–Large–B1	847	847	963	857	882
RCU–Large–B2	1,298	1,298	1,277	1,070	1,123
SCU–W–Large–B	483	687	694	143	149
SCU–A–Small–B	103	198	396	106	106
SCU–A–Large–B	140	522	502	240	240
IMH–A–Small–C	315	314	391	307	(237)
IMH–A–Large–C	660	744	1,026	524	500
SCU–A–Small–C	93	140	146	146	(441)

* LCC results for IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B are a weighted average of the two sub-equipment class level typical units shown on the table, using weights provided in TSD chapter 7.

TABLE V.53—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKERS TSLS: MEDIAN PAYBACK PERIOD

Equipment class	Standard Level *years*				
	TSL1	TSL2	TSL3	TSL4	TSL5
IMH–W–Small–B	1.07	1.26	2.27	2.27	5.42
IMH–W–Med–B	0.63	0.63	0.85	3.33	3.22
IMH–W–Large–B*	0.69	0.69	0.69	3.59	3.60
IMH–W–Large–B1	0.72	0.72	0.72	3.75	3.77
IMH–W–Large–B2	0.58	0.58	0.58	3.10	3.02
IMH–A–Small–B	1.07	1.22	1.42	4.32	4.24
IMH–A–Large–B*	0.46	0.49	0.84	2.16	2.16
IMH–A–Large–B1	0.46	0.50	0.82	2.08	2.08
IMH–A–Large–B2	0.42	0.42	0.94	2.58	2.58
RCU–Large–B*	0.41	0.41	0.65	2.39	2.44
RCU–Large–B1	0.38	0.38	0.62	2.37	2.42
RCU–Large–B2	0.75	0.75	1.00	2.70	2.70
SCU–W–Large–B	0.67	0.76	1.00	3.01	3.00
SCU–A–Small–B	1.40	1.52	1.56	4.79	4.79
SCU–A–Large–B	1.37	1.17	1.49	3.72	3.72
IMH–A–Small–C	0.90	0.90	0.97	2.59	6.83
IMH–A–Large–C	0.52	0.53	0.69	3.25	3.24
SCU–A–Small–C	1.13	1.53	1.85	1.85	19.12

* PBP results for IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B are weighted averages of the results for the two sub-equipment class level typical units, using weights provided in TSD chapter 7.

TABLE V.54—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKER TSLS: DISTRIBUTION OF CUSTOMER LCC IMPACTS

Category	Standard Level *percentage of customers (%)*				
	TSL1	TSL2	TSL3	TSL4	TSL5
IMH–W–Small–B					
Net Cost (%)	0.0	0.0	3.5	3.5	45.3
No Impact (%)	60.8	34.8	0.0	0.0	0.0
Net Benefit (%)	39.2	65.2	96.5	96.5	54.7
IMH–W–Med–B					
Net Cost (%)	0.0	0.0	0.0	14.9	11.3
No Impact (%)	31.0	31.0	14.3	2.4	2.4
Net Benefit (%)	69.0	69.0	85.7	82.7	86.3
IMH–W–Large–B*					
Net Cost (%)	0.0	0.0	0.0	8.4	7.1
No Impact (%)	37.6	37.6	37.6	25.8	22.1
Net Benefit (%)	62.4	62.4	62.4	65.8	70.8
IMH–W–Large–B1					
Net Cost (%)	0.0	0.0	0.0	0.1	0.2
No Impact (%)	28.6	28.6	28.6	28.6	23.8
Net Benefit (%)	71.4	71.4	71.4	71.3	76.0
IMH–W–Large–B2					
Net Cost (%)	0.0	0.0	0.0	35.2	29.4
No Impact (%)	66.6	66.6	66.6	16.7	16.7
Net Benefit (%)	33.4	33.4	33.4	48.1	53.9
IMH–A–Small–B					
Net Cost (%)	0.0	0.0	0.0	27.0	22.4
No Impact (%)	62.9	31.5	0.0	0.0	0.0
Net Benefit (%)	37.1	68.5	100.0	73.0	77.6
IMH–A–Large–B*					
Net Cost (%)	0.0	0.0	0.0	3.6	3.6
No Impact (%)	59.8	22.8	6.3	2.1	2.1
Net Benefit (%)	40.2	77.2	93.7	94.4	94.4
IMH–A–Large–B1					
Net Cost (%)	0.0	0.0	0.0	1.2	1.2
No Impact (%)	58.6	14.7	0.0	0.0	0.0
Net Benefit (%)	41.5	85.4	100.0	98.8	98.8
IMH–A–Large–B2					
Net Cost (%)	0.0	0.0	0.0	16.5	16.5
No Impact (%)	66.6	66.6	40.0	13.4	13.4
Net Benefit (%)	33.4	33.4	60.0	70.2	70.2
RCU–Large–B*					
Net Cost (%)	0.0	0.0	0.0	5.9	5.2
No Impact (%)	58.1	58.1	18.5	9.5	9.5
Net Benefit (%)	41.9	41.9	81.5	84.6	85.3

TABLE V.54—SUMMARY OF RESULTS FOR AUTOMATIC COMMERCIAL ICE MAKER TSLS: DISTRIBUTION OF CUSTOMER LCC IMPACTS—Continued

Category	Standard Level *percentage of customers (%)*				
	TSL1	TSL2	TSL3	TSL4	TSL5
RCU–Large–B1					
Net Cost (%)	0.0	0.0	0.0	5.8	5.1
No Impact (%)	57.2	57.2	17.9	9.0	9.0
Net Benefit (%)	42.8	42.8	82.1	85.3	85.9
RCU–Large–B2					
Net Cost (%)	0.0	0.0	0.0	7.1	6.2
No Impact (%)	72.7	72.7	27.3	18.2	18.2
Net Benefit (%)	27.3	27.3	72.7	74.7	75.7
SCU–W–Large–B					
Net Cost (%)	0.0	0.0	0.0	49.3	48.8
No Impact (%)	71.4	71.4	57.2	14.3	14.3
Net Benefit (%)	28.6	28.6	42.8	36.4	36.8
SCU–A–Small–B					
Net Cost (%)	0.0	0.0	0.0	31.8	31.8
No Impact (%)	82.9	37.1	11.5	0.0	0.0
Net Benefit (%)	17.1	62.9	88.5	68.2	68.2
SCU–A–Large–B					
Net Cost (%)	0.0	0.0	0.1	34.3	34.3
No Impact (%)	71.4	35.7	7.2	0.0	0.0
Net Benefit (%)	28.6	64.3	92.7	65.7	65.7
IMH–A–Small–C					
Net Cost (%)	0.0	0.0	0.0	7.9	72.7
No Impact (%)	77.2	54.3	40.0	31.4	11.5
Net Benefit (%)	22.8	45.7	60.0	60.7	15.9
IMH–A–Large–C					
Net Cost (%)	0.0	0.0	0.0	21.3	21.1
No Impact (%)	65.0	45.0	15.0	15.0	10.0
Net Benefit (%)	35.0	55.0	85.0	63.7	68.9
SCU–A–Small–C					
Net Cost (%)	0.0	0.0	0.0	0.0	79.8
No Impact (%)	73.4	53.3	36.7	36.7	20.0
Net Benefit (%)	26.6	46.7	63.3	63.3	0.2

* LCC results for IMH–W–Large–B, IMH–A–Large–B, and RCU–Large–B are a weighted average of the two sub-equipment class level typical units shown on the table.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade-off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (*e.g.,* an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (*e.g.,* renter versus building owner, builder versus home buyer). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings.

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an amended energy conservation standard, DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[72] DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE welcomes comments on information and methods to better assess the potential impact of energy conservation standards on consumer choice and methods to quantify this impact in its regulatory analysis in future rulemakings.

TSL 5 corresponds to the max-tech level for all the equipment classes and offers the potential for the highest cumulative energy savings through the analysis period from 2018 to 2047. The estimated energy savings from TSL 5 is 0.401 quads of energy, and potable water savings are 45.4 billion gallons. DOE projects a net positive NPV for customers valued at $0.370 billion at a 7-percent discount rate. Estimated emissions reductions are 20.4 MMt of CO_2, up to 12.2 kt of NO_X and 0.03 tons

[72] Sanstad, A. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory, Berkeley, CA. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf.*

of Hg. The CO_2 emissions have a value of up to $2.0 billion and the NO_X emissions have a value of up to $7.8 million at a 7-percent discount rate.

For TSL 5, with the exception of equipment class IMH–A–Small–C and SCU–A–Small–C, the mean LCC savings for all equipment classes are positive, implying a decrease in LCC, with the decrease ranging from $49 for the IMH–W–Small–B equipment class to $945 for the IMH–A–Large–B equipment class.[73] Although the mean LCC decreases indicate a savings potential for commercial ice makers as a whole, the results shown on Table V.54 indicates a large fraction of customers would experience net LCC increases (*i.e.,* LCC costs rather than savings) from adoption of TSL 5, with 30 to nearly 80 percent of customers experiencing net LCC increases in six equipment classes. As shown on Table V.53, customers in 10 equipment classes would experience payback periods of 3 years or longer.

At TSL 5, manufacturers may experience a loss of INPV due to large investments in product development and manufacturing capital as nearly all products will need substantial redesign and existing production lines will need to be adapted to produce evaporators and cabinets, among other components, for the newly compliant designs. Where these designs may differ considerably from those currently available, this TSL also presents a significant testing burden. The projected change in INPV ranges from a decrease of $32.6 million to a decrease of $19.9 million depending on the chosen manufacturer markup scenario. The upper bound of a $19.9 million decrease in INPV is considered an optimistic scenario for manufacturers because it assumes they can maintain the same gross margin (as a percentage of revenue) on their sales. DOE recognizes the risk of large negative impacts on industry if manufacturers' expectations concerning reduced profit margins are realized. TSL 5 could reduce the INPV for automatic commercial ice makers by up to 32.0 percent if impacts reach the lower bound of the range, which represents a scenario in which manufacturers cannot fully mark up the increased equipment costs, and therefore cannot maintain the same overall gross margins (as a percentage of revenue) they would have in the base case.

In addition to the estimated impacts on INPV, the impacts on manufacturing capacity and competition are of concern at TSL 5. While more than half of the manufacturers who produce continuous products, already offer at least one product that complies with TSL 5, only two manufacturers currently produce batch commercial ice makers that comply with the efficiency levels specified at TSL 5. This includes one small business manufacturer whose niche products have among the very largest harvest capacities in their respective equipment classes and are sold in small quantities relative to the rest of the industry. In contrast to this small business manufacturer, the other manufacturer is Hoshizaki, which produces more mainstream batch products and commands substantial market share.

The concentration of current production of batch commercial ice makers at TSL 5 presents two issues. Hoshizaki holds intellectual property covering the design of the evaporator used in their batch equipment, which limits the range of possible alternative paths to achieving the efficiency levels for batch equipment specified at TSL 5. While the engineering analysis identified other means to achieve these high efficiencies, given this limitation on design options, other manufacturers expressed significant doubts regarding their ability to do so. Further, DOE's analysis indicates that these efficiency levels require the use of permanent magnet motors and, for batch equipment, drain water heat exchangers. DOE was able to identify only one supplier of the latter technology, whose design is patented. In addition, there is currently very limited use of permanent magnet motors in commercial ice makers; hence, motor suppliers would be required to develop and initiate production for a broad range of new motor designs suitable for automatic commercial ice makers. These needs could severely impact automatic commercial ice maker manufacturers' ability to procure the required components in sufficient quantities to supply the market.

Assuming the other paths to achieving these efficiency levels prove fruitful, TSL 5 would still require that every other manufacturer retool their entire batch equipment production lines. Further, DOE review of the efficiency levels of available equipment shows that only 13 percent of Hoshizaki's batch products meet the TSL 5 efficiency levels, suggesting that the vast majority of their production lines would also require redesign and retooling. In confidential interviews, one manufacturer cited the possibility of a 3-month to 6-month shutdown in the event that amended standards were set high enough to require retooling of their entire product line. Compounding this effect across the industry could severely impact manufacturing capacity in the interim period between the announcement of the standards and the compliance date.

After carefully considering the analysis results and weighing the benefits and burdens of TSL 5, DOE finds that at TSL 5, the benefits to the Nation in the form of energy savings and emissions reductions plus an increase of $0.370 billion in customer NPV are weighed against a decrease of up to 32.0 percent in INPV. While most individual customers purchasing automatic commercial ice makers built to TSL 5 standards would be better off than in the base case, most would face payback periods in excess of 3 years. The limited number of manufacturers currently producing batch commercial ice makers that meet this efficiency level is cause for additional concern. After weighing the burdens of TSL 5 against the benefits, DOE finds TSL 5 not to be economically justified. DOE does not propose to adopt TSL 5 in this rulemaking.

TSL 4, the next highest efficiency level, corresponds to the highest efficiency level with a positive NPV at a 7-percent discount rate for all equipment classes. The estimated energy savings from 2018 to 2047 are 0.380 quads of energy and 45.4 billion gallons of potable water—amounts DOE deems significant. At TSL 4, DOE projects an increase in customer NPV of $0.484 billion (2012$) at a 7-percent discount rate; estimated emissions reductions of 19.4 MMt of CO_2, 11.6 kt of NO_X, and 0.03 tons of Hg. The monetary value of these emissions was estimated to be up to $1.9 billion for CO_2 and up to $7.4 million for NO_X at a 7-percent discount rate.

At TSL 4, the mean LCC savings are positive for all equipment classes. As shown on Table V.52, mean LCC savings vary from $106 for SCU–A–Small–B to $945 for IMH–A–Large–B, which implies that, on average, customers will experience an LCC benefit. However, as shown on Table V.54, for 11 of the 12 classes, at least some fraction of the customers will experience net costs. Customers in 3 classes would experience net LCC costs of 30 percent or more, with the percentage ranging up to 49 percent for one equipment class. Median payback periods range from 1.9 years up to 4.8 years, with 7 of the 12 directly analyzed classes exhibiting payback periods over 3 years.

At TSL 4, the projected change in INPV ranges from a decrease of $30.5 million to a decrease of $19.6 million.

[73] Two of the typical units modeled for the three large batch classes have higher savings. For this section of the NOPR, the discussion is limited to results for full equipment classes.

The impact on manufacturers at TSL 4 is not significantly different from that at TSL 5 as the individual efficiency levels for each equipment class at TSL 4 are on average not significantly different from those at TSL 5, and in several instances they are the same. DOE recognizes the risk of negative impacts at TSL 4 if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of − $30.5 million is reached, as DOE expects, TSL 4 could result in a net loss of 30.0 percent in INPV for manufacturers of automatic commercial ice makers.

The impacts on manufacturing capacity and competition are of concern at TSL 4. While every manufacturer who produces continuous equipment offers at least one product that complies with TSL 4, only two manufacturers currently produce batch commercial ice makers that comply with the efficiency levels specified at TSL 4. This includes one small business manufacturer whose niche products have among the very largest harvest capacities in their respective equipment classes and are sold in small quantities relative to the rest of the industry. In contrast to this small business manufacturer, the other manufacturer is a larger manufacturer which produces more mainstream batch products and commands a substantial market share.

The concentration of current production at TSL 4 presents two issues. One large manufacturer holds intellectual property covering the evaporator design used in their batch equipment, which in turn limits the range of possible alternative paths to achieving the efficiency levels specified at TSL 4. While the engineering analysis identified other means to achieve these high efficiencies, given this limitation on design options, other manufacturers expressed significant doubts regarding their ability to do so. Further, DOE's analysis indicates that these efficiency levels require the use of permanent magnet motors and, for most batch equipment, drain water heat exchangers. DOE was able to identify only one supplier of the latter technology, whose design is patented. In addition, there is currently very limited use of permanent magnet motors in commercial ice makers; hence, motor suppliers would be required to develop and initiate production for a broad range of new motor designs suitable for automatic commercial ice makers. These needs could severely impact automatic commercial ice maker manufacturers' ability to procure the required components in sufficient quantities to supply the market.

Assuming other paths to achieving these efficiency levels prove fruitful, TSL 4 would still require that every other manufacturer retool their entire batch equipment production lines. As noted above, only 2 manufacturers currently produce equipment that meets TSL 4 efficiency levels, one of which is a large manufacturer. DOE's review of the efficiency levels of available equipment shows that only 14 percent of the large manufacturer's batch products meet the TSL 4 efficiency levels, suggesting the vast majority of their production lines would also require redesign and retooling. In confidential interviews, another manufacturer cited the possibility of a 3-month to 6-month shutdown in the event that amended standards were set high enough to require retooling of their entire product line. Compounding this effect across the industry could severely impact manufacturing capacity in the interim period between the announcement of the standards and the compliance date.

After carefully considering the analysis results and weighing the benefits and burdens of TSL 4, DOE finds that at TSL 4, the benefits to the Nation in the form of energy savings and emissions reductions plus an increase of $0.484 billion in customer NPV are weighed against a decrease of up to 30.0 percent in INPV. While most individual customers purchasing automatic commercial ice makers built to TSL 4 standards would be better off than in the base case, customers in 7 of 12 equipment classes would face payback periods in excess of 3 years. The limited number of manufacturers currently producing batch commercial ice makers that meet this efficiency level is cause for additional concern. After weighing the burdens of TSL 4 against the benefits, DOE finds TSL 4 not to be economically justified. DOE does not propose to adopt TSL 4 in this notice.

At TSL 3, the next highest efficiency level, estimated energy savings from 2018 to 2047 are 0.286 quads of primary energy and water savings are 45.4 billion gallons—amounts DOE considers significant. TSL 3 was defined as the set of efficiencies with the highest NPV for each analyzed equipment class. At TSL 3, DOE projects an increase in customer NPV of $0.791 billion at a 7-percent discount rate, and an increase of $1.751 billion at a 3-percent discount rate. Estimated emissions reductions are 14.6 MMt of CO_2, up to 8.7 kt of NO_X and 0.02 tons of Hg at TSL 3. The monetary value of the CO_2 emissions reductions was estimated to be up to $1.4 billion at TSL 3, while NO_X emission reductions at a 7-percent discount rate were valued at up to $5.5 million.

At TSL 3, nearly all customers for all equipment classes are shown to experience positive LCC savings. As shown on Table V.54, the percent of customers experiencing a net cost rounds to 0 in all but two classes—SCU–A–Large–B with 0.1 percent and IMH–W–Small–B with 3.5 percent of customers exhibiting a net cost. The payback period for IMH–W–Small–B is 2.3 years, while for all other equipment classes the median payback periods are 1.9 years or less. LCC savings range from $146 for SCU–A–Small–C to over $1,100 for IMH–A–Large–B.

At TSL 3, the projected change in INPV ranges from a decrease of $23.9 million to a decrease of $20.9 million. The three largest manufacturers, who together represent an estimated 95 percent of the market, currently produce a combined 38 compliant batch products at TSL 3. Many of the gains in efficiency needed to meet the standards proposed at TSL 3 can be achieved using higher efficiency components as opposed to the redesign of systems manufactured in-house and as such require little change to existing manufacturing capital. The lack of green-field redevelopment or significant recapitalization mitigates the risk of disruption to manufacturing capacity in the interim period between announcement of the energy conservation standards and the compliance date.

At TSL 3, the monetized CO_2 emissions reduction values range from $0.102 to $1.426 billion. The monetized CO_2 emissions reduction at $39.7 per ton in 2012$ is $0.463 billion. The monetized NO_X emissions reductions calculated at an intermediate value of $2,639 per ton in 2012$ are $3 million at a 7-percent discount rate and $9.6 million at a 3-percent rate. These monetized emissions reduction values were added to the customer NPV at 3-percent and 7-percent discount rates to obtain values of $2.223 billion and 1.257 billion, respectively, at TSL 3. The total customer and emissions benefits are highest at TSL 3.

Nearly all customers are expected to experience net benefits from equipment built to TSL 3 levels. The payback periods for TSL 3 are expected to be 2.3 years, or less.

After carefully considering the analysis results and weighing the benefits and burdens of TSL 3, DOE believes that setting the standards for automatic commercial ice makers at TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and

economically justified. TSL 3 is technologically feasible because the technologies required to achieve these levels already exist in the current market and are available from multiple manufacturers. TSL 3 is economically justified because the benefits to the Nation in the form of energy savings, customer NPV at 3 percent and at 7 percent, and emissions reductions outweigh the costs associated with reduced INPV and potential effects of reduced manufacturing capacity.

Therefore, DOE proposes the adoption of amended energy conservation standards for automatic commercial ice makers at TSL 3.

DOE specifically seeks comment on the magnitude of the estimated decline in INPV at TSL 3 compared to the baseline, and whether this impact could risk industry consolidation. DOE also specifically requests comment on whether DOE should adopt TSL 4 or 5 and why., DOE may reexamine the proposed level depending on the nature of the information it receives during the comment period and adjust its final levels in response to that information.

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,'' 58 FR 51735 (Oct. 4, 1993), 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. The problems that today's standards address are as follows:

1. There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the automatic commercial ice maker market.

2. There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

3. There are external benefits resulting from improved energy efficiency of automatic commercial ice makers that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of GHGs.

In addition, DOE has determined that today's regulatory action is an ''economically 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 an RIA on today's rule and that OIRA in OMB review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA. DOE has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the TSD for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3821 (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, ORIA 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 today's 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 at 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking*).

1. Description and Estimated Number of Small Entities Regulated

For manufacturers of automatic commercial ice makers, the 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 NAICS code and industry description and are available at: *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

Manufacturing of automatic commercial ice makers is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes ice-making machinery manufacturing. The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business in this category.

During its market survey, DOE used available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI), public databases (*e.g.,*

AHRI Directory,[74] the SBA Database [75]), individual company Web sites, and market research tools (*e.g.,* Hoovers reports [76]) to create a list of companies that manufacture or sell equipment covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered automatic commercial ice makers. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned.

DOE identified seven small domestic businesses manufacturers of automatic commercial ice makers operating in the United States. DOE contacted each of these companies, but only one accepted the invitation to participate in a confidential manufacturer impact analysis interview with DOE contractors.

2. Description and Estimate of Compliance Requirements

DOE estimates that the seven small domestic manufacturers of automatic commercial ice makers identified by DOE account for approximately 5 percent of industry shipments. While small business manufacturers of automatic commercial ice makers have small overall market share, some hold substantial market share in specific equipment classes. Several of these smaller firms specialize in producing industrial ice machines and the covered equipment they manufacture are extensions of existing product lines that fall within the range of capacity covered by this rule. Others serve niche markets. Most have substantial portions of their business derived from equipment outside the scope of this rulemaking, but are still considered small businesses based on the SBA limits for number of employees.

At the proposed level, small business manufacturers of automatic commercial ice makers are expected to face negative impacts on INPV that are more than three times as severe as those felt by the industry at large: A loss of 78.6 percent of INPV for small businesses alone as compared to a loss of 23.5 percent for the industry at large. Where conversion costs are driven by the number of platforms requiring redesign at a particular standard level, small business manufacturers may be disproportionately affected. Product conversion costs including the investments made to redesign existing equipment to meet new or amended standards or to develop entirely new compliant equipment, as well as industry certification costs, do not scale with sales volume. As small manufacturers' investments are spread over a much lower volume of shipments, recovering the cost of upfront investments is proportionately more difficult.

Similarly, capital conversion costs may disproportionately affect small business manufacturers of automatic commercial ice makers. Capital conversion costs are projected to be highest in the year preceding standards as manufacturers retrofit production lines to make compliant equipment. In this year, capital conversion costs are estimated to represent 97 percent of typical capital expenditures for small businesses, as compared to 34 percent for the industry as a whole. Where the covered equipment from several small manufacturers are adaptations of larger platforms with capacities above the 4,000 lb ice/24 hour threshold, it may not prove economical for them to retrofit an entire production line to meet standards that only affect one product.

In confidential interviews, manufacturers indicated that many design options evaluated in the engineering analysis (*e.g.,* higher efficiency motors and compressors) would require them to purchase more expensive components. In many industries, small manufacturers typically pay higher prices for components due to smaller purchasing volumes while their large competitors receive volume discounts. However, this effect is diminished for the automatic commercial ice maker manufacturing industry for two distinct reasons. One reason relates to the fact that the automatic commercial ice maker industry as a whole is a low volume industry. In confidential interviews, manufacturers indicated that they have little influence over their suppliers, suggesting the volume of their component orders is similarly insufficient to receive substantial discounts. The second reason relates to the fact that, for most small businesses, the equipment covered by this rulemaking represents only a fraction of overall business. Where small businesses are ordering similar components for non-covered equipment, their purchase volumes may not be as low as is indicated by the total unit shipments for small businesses. For these reasons, it is expected that any volume discount for components enjoyed by large manufacturers would not be substantially different from the prices paid by small business manufacturers.

To estimate how small manufacturers would be potentially impacted, DOE developed specific small business inputs and scaling factors for the GRIM. These inputs were scaled from those used in the whole industry GRIM using information about the product portfolios of small businesses and the estimated market share of these businesses in each equipment class. DOE used this information in the GRIM to estimate the annual revenue, EBIT, R&D expense, and capital expenditures for a typical small manufacturer and to model the impact on INPV. DOE then compared these impacts to those modeled for the industry at large. The results are shown on Table VI.1 and Table VI.2.

TABLE VI.1—COMPARISON OF SMALL BUSINESS MANUFACTURERS OF AUTOMATIC COMMERCIAL ICE MAKER INPV TO THAT OF THE INDUSTRY AT LARGE BY TSL UNDER THE PRESERVATION OF GROSS MARGIN MARKUP SCENARIO*

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Industry at Large—Impact on INPV ($2012)	$(8.4)	$(12.8)	$(20.9)	$(19.6)	$(19.9)
Industry at Large—Impact on INPV (%)	(8.2)%	(12.6)%	(20.5)%	(19.2)%	(19.5)%
Small Businesses—Impact on INPV ($2012)	$(1.8)	$(2.9)	$(3.9)	$(4.1)	$(4.5)
Small Businesses—Impact on INPV (%)	(35.4)%	(57.0)%	(76.6)%	(80.5)%	(88.4)%

*Values in parentheses are negative numbers.

[74] See *www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[75] See *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[76] See *www.hoovers.com/.*

TABLE VI.2—COMPARISON OF SMALL BUSINESS MANUFACTURERS OF AUTOMATIC COMMERCIAL ICE MAKER INPV TO THAT OF THE INDUSTRY AT LARGE BY TSL UNDER THE PRESERVATION OF EBIT MARKUP SCENARIO

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Industry at Large—Impact on INPV ($2012)	$(8.7)	$(13.6)	$(23.9)	$(30.5)	$(32.6)
Industry at Large—Impact on INPV (%)	(8.5)%	(13.4)%	(23.5)%	(30.0)%	(32.0)%
Small Businesses—Impact on INPV ($2012)	$(1.8)	$(3.0)	$(4.0)	$(4.6)	$(5.1)
Small Businesses—Impact on INPV (%)	(35.4)%	(58.9)%	(78.6)%	(90.3)%	(100.2)%

*Values in parentheses are negative numbers.

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 promulgated today.

4. Significant Alternatives to the Rule

The primary alternatives to the proposed rule are the other TSLs besides the one being considered today, TSL 3. DOE explicitly considered the role of manufacturers, including small manufacturers, in its selection of TSL 3 rather than TSLs 4 or 5. Though higher TSLs result in greater energy savings for the country, they would place significant burdens on manufacturers. Chapter 12 of the NOPR TSD contains additional information about the impact of this rulemaking on manufacturers.

In addition to the other TSLs being considered, chapter 17 of the NOPR TSD and Section V.B.7 include reports on a regulatory impact analysis (RIA). For automatic commercial ice makers, the RIA discusses the following policy alternatives: (1) No change in standard; (2) customer rebates; (3) customer tax credits; (4) manufacturer tax credits; and (5) early replacement. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the amended standards, DOE determined that the energy savings of these regulatory alternatives could be approximately one-third to one-half less than the savings that would be expected to result from adoption of the amended standard levels. Because of the significantly lower savings, DOE rejected these alternatives and proposes to adopt the amended standards set forth in this rulemaking.

However, DOE seeks comment and, in particular, data on the impacts of this rulemaking upon small businesses. (See Issue 10 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR.)

C. Review Under the Paperwork Reduction Act

Manufacturers of automatic commercial ice makers must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for automatic commercial ice makers, 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/industrial equipment, including automatic commercial ice makers. 76 FR 12422 (March 7, 2011). 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 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 *et seq.*) 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 equipment, 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://energy.gov/nepa/downloads/cx-008014-categorical-exclusion-determination*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR at 13735. 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) 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; and (3) provide a clear legal standard for affected conduct rather than a general

standard and 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. 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 at 12820. DOE's policy statement is also available at *http://energy.gov/gc/downloads/unfunded-mandates-reform-act-intergovernmental-consultation*.

Although today's proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) Investment in research and development and in capital expenditures by automatic commercial ice makers manufacturers in the years between the final rule and the compliance date for the new standards; and (2) incremental additional expenditures by customers to purchase higher efficiency automatic commercial ice makers, starting at the compliance date for the applicable standard.

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 NOPR and the ''Regulatory Impact Analysis'' section of the NOPR TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, DOE 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 6313(d), this proposed rule would establish energy conservation standards for automatic commercial ice makers 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'' section of the TSD for today's 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

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 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 the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's 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 today's regulatory action, which sets forth proposed energy conservation standards for automatic commercial ice makers, 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. 70 FR at 2667 (Jan. 14, 2005).

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 rulemaking. 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. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons 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/rulemaking.aspx/ruleid/29*.

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. 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 rulemaking. 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 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 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 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 below.

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/courier, 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 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. 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 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. 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/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues.

1. Standards Compliance Dates

EPCA requires that the amended standards established in this rulemaking must apply to equipment that is manufactured on or after 3 years after the final rule is published in the **Federal Register** unless DOE determines, by rule, that a 3-year period is inadequate, in which case DOE may extend the compliance date for that standard by an additional 2 years. (42 U.S.C. 6313(d)(3)(C))

For the NOPR analyses, DOE assumed a 3-year period to prepare for compliance. DOE requests comments on the January 1, 2018 effective date, and whether a January 1, 2018 effective date provides an inadequate period for compliance and what economic impacts would be mitigated by a later effective date.

DOE also requests comment on whether the 3-year period is adequate for manufacturers to obtain more efficient components from suppliers to meet proposed revisions of standards. More discussion on this topic can be found in Section IV.B.1.g of today's NOPR.

2. Utilization Factors

The utilization factor represents the percent of time that an ice maker actively produces ice. Ice maker usage is measured in terms of kilowatt-hours per 100 lb/24 hours, whereas subsequent analyses require annual energy usage in kilowatt-hours. Thus, a usage factor is required to translate the potential energy usage into estimated annual usage. In the Framework document, the Department presented a series of factors for each type of building that represents an ice maker market segment, and all were set to 0.5, meaning all building types would be modeled with a utilization factor indicating that equipment runs one-half of the time. The Stakeholders pointed out that not all building segments should be at 0.5, but DOE did not receive any data or information that DOE can use to differentiate the utilization factor by building type. DOE requests data for individual building types. More discussion on this topic can be found in Section IV.G.3 of today's NOPR.

3. Baseline Efficiency

For this notice, DOE chose continuous machine baselines at sufficiently high energy use levels that they exclude almost no equipment. DOE based the baselines on online data from the AHRI database. DOE requests comments on the development of continuous type equipment base efficiency levels and on the availability of data on which to create continuous machine baselines. More discussion on this topic can be found in Section IV.D.2.a of today's NOPR.

4. Screening Analysis

DOE requests comment on the screening analysis and, specifically, the design options DOE screened out of the rulemaking analysis.

DOE considered whether design options were technologically feasible; practicable to manufacture, install, or service; had adverse impacts on product utility or product availability; or had adverse impacts on health or safety. See Section IV.C of today's NOPR and chapter 4 of the NOPR TSD for further discussion of the screening analysis.

5. Maximum Technologically Feasible Levels

DOE seeks comments on the Maximum Technologically Feasible levels proposed in Table III.2 and Table III.3 of today's notice. More discussion on this topic can be found in Section IV.D.2.e of today's NOPR.

6. Markups to Determine Price

DOE identified three major distribution channels through which automatic commercial ice maker equipment is purchased by the end-user: (1) Manufacturer to end-user (direct channel); (2) manufacturer to wholesale distributor to end-user (wholesaler channel); and (3) manufacturer to distributor to dealer or contractor to end-user (contractor channel). DOE currently uses mechanical contractor data to estimate the contribution of local dealers or contactors to end-user prices. DOE requests specific input to improve the cost estimation for the local dealer or contractor component of markups. More discussion on this topic can be found in Section IV.E of today's NOPR.

7. Equipment Life

For the NOPR analyses, DOE used an 8.5 years average life for all equipment classes, with analyses based on a lifetime distribution averaging 8.5 years. (TSD chapter 9 discusses the development of the distribution.) In comments on the preliminary analysis, one stakeholder stated that continuous machines might have shorter life spans. DOE requests specific information to determine whether continuous and batch types should be analyzed using different equipment life assumptions, and if so, what they would be. More discussion on this topic can be found in Section IV.G.8 of today's NOPR.

8. Installation Costs

Stakeholders commented that higher efficiency equipment would incur additional installation costs when compared to the baseline equipment. DOE requests specificity with respect to this comment, with specific information on design options that will increase installation costs and specific information to enable DOE to adjust installation costs appropriately. More discussion on this topic can be found in Section IV.G.2.a of today's NOPR.

9. Open- Versus Closed-Loop Installations

Stakeholders commented that some localities in the U.S. have instituted local ordinances or laws precluding installation of ice makers in open-loop configurations. DOE requests stakeholder assistance in quantifying the impact of local regulations on the prevalence of open-loop installations. More discussion on this topic can be found in Section IV.D.3.c of today's NOPR.

10. Ice Maker Shipments by Type of Equipment

DOE's shipments forecast is based on a single snapshot of shipments by the type of equipment. Stakeholders at the preliminary analysis phase suggested that the equipment mix may be changing over time. DOE requests additional data concerning shipment trends/forecasts. More discussion on this topic can be found in Section IV.H.1 of today's NOPR.

11. Intermittency of Manufacturer R&D and Impact of Standards

One manufacturer reported that a previous round of standards required nearly all of the company's engineering resources for between 1 and 2 years. Where manufacturers may divert existing R&D resources to compliance related R&D efforts, DOE requests additional comment on the impact on innovation of compliance related R&D efforts. Specifically, DOE requests comment on how to quantify this impact on innovation. More discussion on this topic can be found in Section IV.J of today's NOPR.

12. INPV Results and Impact of Standards

Based on weighing of data, DOE is recommending TSL 3 for the new and amended automatic commercial ice maker standards. DOE recognizes that new and amended standards will have impacts on industry net present value results. DOE specifically seeks comment on the magnitude of the estimated decline in INPV at TSL 3 compared to the baseline, and what impact this may have on manufacturers. More discussion on this topic can be found in Section V.B.2 of today's NOPR.

13. Small Businesses

During the Framework and February 2012 preliminary analysis public meetings, DOE received many comments regarding the potential impacts of amended energy conservation standards on small business manufacturers of automatic commercial ice makers. DOE incorporated this feedback into its analyses for the NOPR and has presented its results in this notice and the NOPR TSD. However, DOE seeks comment and, in particular, additional data, in its efforts to quantify the impacts of this rulemaking on small businesses. More discussion on this topic can be found in Section IV.J.3.d of today's NOPR.

14. Consumer Utility and Performance

DOE requests comment on whether there are features or attributes of the more energy-efficient automatic commercial ice makers, including any potential changes to the evaporator design that would result in changes to the ice style or changes in the chassis size, that manufacturers would produce to meet the standards in this proposed rule that might affect how they would be used by consumers. DOE requests comment specifically on how any such effects should be weighed in the choice of standards for the automatic commercial ice makers for the final rule. More discussion on this topic can be found in Section V.B.3 of today's NOPR.

15. Analysis Period

For this rulemaking, DOE analyzed the effects of this proposal assuming that the automatic commercial ice makers would be available to purchase for 30 years and undertook a sensitivity analysis using 9 years rather than 30 years of product shipments. The choice of a 30-year period of shipments is consistent with the DOE analysis for other products and commercial equipment. 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 revised standards. We are seeking input, information and data on whether there are ways to further refine the analytic timeline. More discussion on this topic can be found in Section IV.H.1 of today's NOPR.

16. Social Cost of Carbon

DOE solicits comment on the application of the new SCC values used to determine the social benefits of CO_2 emissions reductions over the rulemaking analysis period. (The rulemaking analysis period covers from 2018 to 2047 plus the appropriated number of years to account for the lifetime of the equipment purchased between 2018 and 2047.) In particular, the agency solicits comment on the agency's derivation of SCC values after 2050 where the agency applied the average annual growth rate of the SCC estimates in 2040–2050 associated with each of the four sets of values. More discussion on this topic can be found in Section IV.L.1 of today's NOPR.

17. Remote to Rack Equipment

In the preliminary analysis, DOE found that some high-capacity RCU–RC-Large-C ice makers are solely designed to be used with compressor racks and the racks' associated condensers. DOE requests comment and supporting data on the overall market share of these units and any expected market trends. More discussion on this topic can be found in Section IV.B.1.f of today's NOPR.

18. Design Options Associated With Each TSL

Section V.A.1 of today's NOPR discusses the design options associated with each TSL, for each analyzed product class. DOE requests comment and data related to the required equipment size increases associated with the design options at each TSL levels. Chapter 5 of the NOPR TSD contains full descriptions of the design options and DOE's analyses for the equipment size increase associated with the design options selected. DOE also requests comments and data on the efficiency gains associated with each set of design options. Chapter 5 of the NOPR TSD contains DOE's analyses of the efficiency gains for each design option considered. Finally, DOE requests comment and data on any utility impacts associated with each set of design options, such as potential ice-style changes.

19. Standard Levels for Batch-Type Ice Makers Over 2,500 lbs Ice/24 Hours

DOE requests comment and data on the viability of the proposed standard levels selected for batch-type ice makers with harvest capacities from 2,500 to 4,000 lb ice/24 hours. The proposed standard levels are discussed in Section V.A.2 of today's NOPR, and prior comments on standards for batch-type ice makers with harvest capacities from 2,500 to 4,000 lb ice/24 hours are discussed in Section IV.B.1.b of today's NOPR.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Commercial equipment, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, on March 7, 2014.

David T. Danielson,

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

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II of title 10, of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.136 is revised to read as follows:

§ 431.136 Energy conservation standards and their effective dates.

(a) All basic models of commercial ice makers must be tested for performance using the applicable DOE test procedure in § 431.134, be compliant with the applicable standards set forth in paragraphs (b) through (d) of this section, and be certified to the Department of Energy under 10 CFR part 429.

(b) Each cube type automatic commercial ice maker with capacities between 50 and 2,500 pounds per 24-hour period manufactured on or after January 1, 2010 and before [DATE THREE YEARS AFTER PUBLICATION OF FINAL RULE], shall meet the following standard levels:

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice*	Maximum condenser water use* *gal/100 lb ice*
Ice-Making Head	Water	<500	7.8–0.0055H**	200–0.022H.
		≥500 and <1,436	5.58–0.0011H	200–0.022H.
		≥1,436	4.0	200–0.022H.
	Air	<450	10.26–0.0086H	Not Applicable.
		≥450	6.89–0.0011H	Not Applicable.
Remote Condensing (but not remote compressor)	Air	<1,000	8.85–0.0038H	Not Applicable.
		≥1,000	5.1	Not Applicable.
Remote Condensing and Remote Compressor	Air	<934	8.85–0.0038H	Not Applicable.
		≥934	5.3	Not Applicable.
Self-Contained	Water	<200	11.40–0.019H	191–0.0315H.
		≥200	7.6	191–0.0315H.
	Air	<175	18.0–0.0469H	Not Applicable.
		≥175	9.8	Not Applicable.

* Water use is for the condenser only and does not include potable water used to make ice.
** H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate.
Source: 42 U.S.C. 6313(d).

(c) Each batch type automatic commercial ice maker with capacities between 50 and 4,000 pounds per 24-hour period manufactured on or after [DATE THREE YEARS AFTER

PUBLICATION OF FINAL RULE], shall meet the following standard levels:

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice**	Maximum condenser water use** *gal/100 lb ice*
Ice-Making Head	Water	<500	5.84–0.0041H	200–0.022H.
		≥500 and <1,436	3.88–0.0002H	200–0.022H.
		≥1,436 and <2,500	3.6	200–0.022H
		≥2,500 and <4,000	3.6	145.
Ice-Making Head	Air	<450	7.70–0.0065H	Not Applicable.
		≥450 and <875	5.17–0.0008H	Not Applicable.
		≥875 and <2,210	4.5	Not Applicable.
		≥2,210 and <2,500	6.89–0.0011H	Not Applicable.
		≥2,500 and <4,000	4.1	Not Applicable.
Remote Condensing (but Not Remote Compressor)	Air	<1,000	7.52—0.0032H	Not Applicable
		≥1,000 and <4,000	4.3	Not Applicable.
Remote Condensing and Remote Compressor	Air	<934	7.52–0.0032H	Not Applicable.
		≥934 and <4,000	4.5	Not Applicable.
Self-Contained	Water	<200	8.55–0.0143H	191–0.0315H.
		≥200 and <2,500	5.7	191–0.0315H.
		≥2,500 and <4,000	5.7	112.
Self-Contained	Air	<175	12.6–0.0328H	Not Applicable.
		≥175 and <4,000	6.9	Not Applicable.

* H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.
Source: 42 U.S.C. 6313(d).

(d) Each continuous type automatic commercial ice maker with capacities between 50 and 4,000 pounds per 24-hour period manufactured on or after [DATE THREE YEARS AFTER PUBLICATION OF FINAL RULE], shall meet the following standard levels:

Equipment type	Type of cooling	Rated harvest rate *lb ice/24 hours*	Maximum energy use *kWh/100 lb ice**	Maximum condenser water use** *gal/100 lb ice*
Ice-Making Head	Water	<900	6.08–0.0025H	160–0.0176H.
		≥900 and <2,500	3.8	160–0.0176H.
		≥ 2,500 and 4,000	3.8	116.
Ice-Making Head	Air	<700	9.24–0.0061H	Not Applicable.
		≥700 and <4,000	5.0	Not Applicable.
Remote Condensing (but Not Remote Compressor)	Air	<850	7.50–0.0034H	Not Applicable.
		≥850 and <4,000	4.6	Not Applicable.
Remote Condensing and Remote Compressor	Air	<850	7.65–0.0034H	Not Applicable.
		≥850 and <4,000	4.8	Not Applicable.
Self-Contained	Water	<900	7.28–0.0027H	153–0.0252H.
		≥900 and <2,500	4.9	153–0.0252H.
		≥2,500 and <4,000	4.9	90.
Self-Contained	Air	<700	9.20—0.0050H	Not Applicable.
		≥700 and <4,000	5.7	Not Applicable.

* H = rated harvest rate in pounds per 24 hours, indicating the water or energy use for a given rated harvest rate.
** Water use is for the condenser only and does not include potable water used to make ice.
Source: 42 U.S.C. 6313(d).

[FR Doc. 2014–05566 Filed 3–14–14; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 79 Monday,

No. 51 March 17, 2014

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648 and 697

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 51; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648 and 697

[Docket No. 140106011–4215–01]

RIN 0648–BD88

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 51

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes approval of, and regulations to implement, Framework Adjustment 51 to the Northeast Multispecies (Groundfish) Fishery Management Plan. This rule would set catch limits for groundfish stocks, revise the rebuilding programs for Gulf of Maine cod and American plaice, modify management measures for yellowtail flounder, and revise management measures for the U.S./Canada Management Area. Although not part of Framework 51, this action also proposes fishing year 2014 trip limits for the common pool fishery and announces 2014 accountability measures for windowpane flounder. This action is necessary to respond to updated scientific information and achieve the goals and objectives of the Groundfish Plan. The proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Comments must be received by April 1, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0003, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docket Detail;D=NOAA-NMFS-2014-0003,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for Groundfish Framework Adjustment 51.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Framework 51, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the New England Fishery Management Council are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assesses the impacts of the proposed measures on small entities, and describes steps taken to minimize any significant economic impact on these entities. A summary of the IRFA is included in the Classification section of this proposed rule. The Framework 51 EA, RIR, and IRFA are also accessible via the Internet at *www.nefmc.org/nemulti/index.html* or *www.nero.noaa.gov/sfd/sfdmulti.html.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget by email at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257.

SUPPLEMENTARY INFORMATION:

Background

The Groundfish Fishery Management Plan (Groundfish Plan) specifies management measures for 16 groundfish species in Federal waters off the New England and Mid-Atlantic coasts. Based on fish size, and the type of gear used to catch the fish, some of these species are managed as ''small-mesh species,'' and others are managed as ''large-mesh species.'' Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout. Of these species, silver hake (whiting), red hake, and offshore hake are managed under a separate small-mesh multispecies program. Large-mesh species include Atlantic cod, haddock, yellowtail flounder, American plaice, witch flounder, winter flounder, Acadian redfish, white hake, pollock, windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish. These large-mesh species are divided into 19 fish stocks based on their geographic distribution, and, along with ocean pout, are managed under the groundfish program.

The New England Fishery Management Council (Council) is required to set annual catch limits for each groundfish stock, along with accountability measures that help ensure the catch limits are not exceeded and, if they are, that help mitigate the overage. The Council develops annual or biennial management actions to set catch limits based on the best scientific information available and adjust management measures for the groundfish fishery that will help prevent overfishing, rebuild overfished stocks, and achieve optimum yield. For most groundfish stocks, the Council typically adopts catch limits for 3 years at a time. Although it is expected that the Council will adopt new catch limits every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. The Council sets catch limits annually for transboundary Georges Bank (GB) stocks that are jointly managed with Canada (GB yellowtail flounder, eastern GB cod, and eastern GB haddock), as described in more detail later in this rule.

Last year, the Council adopted, and we partially approved, Framework 50, which set fishing year (FY) 2013–2015 catch limits for all groundfish stocks, except for white hake and the U.S./Canada stocks. The Council has now developed and adopted Framework 51 in order to respond to new stock assessment information for white hake and the three U.S./Canada stocks. Based on updated information for other groundfish stocks, the Council has also adopted revised rebuilding programs for Gulf of Maine (GOM) cod and American plaice, as well as other changes to groundfish management measures that better meet the goals and objectives of the groundfish program.

Proposed Measures

This action proposes regulations to implement the measures in Framework

51. The Council deemed the proposed regulations consistent with, and necessary to implement, Framework 51, in a March 10, 2014, letter from Council Vice Chairman John F. Quinn to Regional Administrator John Bullard. Framework 51 proposes to:

1. Revise the rebuilding programs for GOM cod and American plaice;
2. Set FY 2014 catch limits for the three U.S./Canada stocks;
3. Set FY 2014–2016 catch limits for white hake;
4. Adopt accountability measures for GB yellowtail flounder for the small-mesh fisheries;
5. Establish a U.S./Canada quota trading mechanism for FY 2014;
6. Modify the administration of eastern and western GB haddock sector allocations;
7. Revise the stratification used to estimate GB yellowtail flounder discards for monitoring sector catches; and
8. Prohibit possession of yellowtail flounder by limited access scallop vessels.

This action also proposes a number of other measures that are not part of Framework 51, but that may be considered under NMFS Regional Administrator authority provided by the Groundfish Plan. We are including these additional measures in conjunction with the Framework 51 proposed measures for expediency purposes. The additional measures proposed in this action are listed below.

• *FY 2014 management measures for the common pool fishery*—This action proposes FY 2014 trip limits for the common pool fishery. The Regional Administrator has the authority to set management measures for the common pool fishery that will help ensure the fishery catches, but does not exceed, its catch limits.

• *FY 2014 accountability measures for windowpane flounder*—This action announces accountability measures for northern and southern windowpane flounder that are being implemented due to overages of the FY 2012 catch limits for both stocks. We announced these accountability measures at the Council's Groundfish Oversight Committee meeting on November 19, 2013, and in our January 17, 2014, letter to Council Executive Director Thomas A. Nies, but are providing additional notice and opportunity for public comment through this proposed rule.

• *Other regulatory corrections*—We propose several corrections to the regulations to correct references, replace inadvertent deletions, and make other minor edits. Each proposed correction is described in detail in Item 11 of this preamble.

1. Gulf of Maine Cod and American Plaice Rebuilding Programs

Revised Rebuilding Strategies

The current rebuilding strategies for GOM cod and American plaice were adopted in 2004. The rebuilding program for GOM cod was scheduled to rebuild the stock by 2014, and the American plaice rebuilding program was scheduled to rebuild the stock by 2017. In 2012, updated scientific information indicated that neither stock could rebuild by its rebuilding end date, even in the absence of all fishing. As a result, we notified the Council that the stocks were not making adequate rebuilding progress, and that the Council was required to revise the rebuilding programs for both stocks within 2 years, or by May 1, 2014, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires that overfished stocks be rebuilt as quickly as possible, not to exceed 10 years, while accounting for the needs to fishing communities.

In response to this requirement, this rule proposes to revise the rebuilding plans for GOM cod and American plaice. The minimum rebuilding time (T_{min}) is the amount of time a stock is expected to take to rebuild to its maximum sustainable yield biomass level (SSB_{MSY}) in the absence of any fishing mortality. T_{min} for a stock is typically used for informational purposes when developing rebuilding programs, and it is important to note that T_{min} does not necessarily account for the needs of fishing communities, or scientific uncertainties in rebuilding projections. For GOM cod, T_{min} is 6 years, or 2020, and T_{min} for American plaice is 4 years, or 2018. The rebuilding programs proposed in this action would rebuild the stocks within 10 years, or by 2024, which is the maximum time period allowed by the Magnuson-Stevens Act. Both rebuilding programs have a median probability of rebuilding by the target dates. As explained in more detail below, the proposed rebuilding programs intend to address the needs of fishing communities as much as practicable, as well as factor in past performance of groundfish catch projections in order to increase the likelihood of rebuilding success.

Long-term catch projections for groundfish stocks tend to underestimate fishing mortality and overestimate stock biomass (see Appendix 5 to the 2012 groundfish assessment updates for more information: *http://nefsc.noaa.gov/publications/crd/crd1206/*). The inherent uncertainty surrounding long-term projections makes it difficult to estimate the fishing mortality rate that is required to rebuild the stock within the specified time frame, or $F_{rebuild}$. This uncertainty is due, in part, to the estimate's dependence on future stock recruitment (the amount of fish added to the stock each year), which is often difficult to predict. If stock recruitment does not occur as projected, then progress towards rebuilding can occur much slower than expected.

The Council's default control rule for setting catch limits requires that catches be set based on 75% F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield) or $F_{rebuild}$, whichever is lower. Typically, when a stock is in a rebuilding program, $F_{rebuild}$ is less than 75% F_{MSY}, and, thus, the annual catch limits are usually set based on $F_{rebuild}$. Rebuilding progress for many groundfish stocks has often occurred slower than expected due to the uncertainties in long-term catch projections, which leads to dramatic reductions in catch limits as the rebuilding end date gets closer. As $F_{rebuild}$ approaches zero, it is less likely to be used for setting catch limits, which can undermine rebuilding objectives.

To help avoid this problem, the revised rebuilding end dates proposed in this action were calculated using an $F_{rebuild}$ that was greater than 75% F_{MSY}. During the rebuilding time period, catches would continue to be set consistent with the Council's default control rule (75% F_{MSY} or $F_{rebuild}$, whichever is lower). Thus, under this approach, catches would be set more conservatively than $F_{rebuild}$ (based on 75% F_{MSY}), at least initially in the proposed rebuilding programs. This strategy is intended to accelerate the rebuilding timeline and increase the likelihood of success. In the future, if information shows that GOM cod and American plaice stock sizes have not increased as projected, it is possible that $F_{rebuild}$ could become less than 75% F_{MSY}. Under this scenario, catches would then be set based on the lower rate, or $F_{rebuild}$, consistent with the Council's default control rule.

The proposed 10-year rebuilding strategy for GOM cod also accounts for additional uncertainty that results from the two different stock assessment models, which make it difficult to project how quickly the stock will rebuild. The most recent stock assessment for GOM cod, completed in December 2012, approved two different

assessment models and, as a result, both assessment models are used to provide catch advice. One assessment model (base case model) assumes the natural mortality rate (M) is 0.2. The second assessment model (M_{ramp} model) assumes that M has increased from 0.2 to 0.4 in recent years. The assessment concluded that M would return to 0.2 at some point though, in the short-term, M would remain 0.4. As a result, fishing mortality targets used in the catch projections from both models are based on biological reference points that assume M=0.2. A detailed summary of the benchmark assessment is available from the NMFS Northeast Fisheries Science Center at: *http://www.nefsc.noaa.gov/saw/saw55/crd1301.pdf.* There is little difference in the time period needed to rebuild GOM cod based on the two assessment models. However, the catches estimated in the out years (closer to the rebuilding end date) differ between the two assessment models, and so do the estimates of SSB_{MSY}.

Interpreting and developing a rebuilding program under the M_{ramp} model is difficult because it is not known when M would return to 0.2. However, a change in M (from 0.4 to 0.2) is required to rebuild the GOM cod stock, and if this reduction does not occur, then GOM cod may be unable to rebuild based on the proposed rebuilding strategy. For this reason, the 10-year rebuilding program proposed in this action is expected to better account for these uncertainties compared to a shorter rebuilding time period.

The rebuilding strategies proposed in Framework 51 would use the full 10 years, as allowed by the Magnuson-Stevens Act, even though rebuilding might be able to occur sooner. These strategies are intended to account for the uncertainties noted above, as well as to account for the needs of fishing communities. As noted above, the approach used for developing the proposed rebuilding strategies is intended to accelerate the rebuilding timeline because catches would be set more conservatively than $F_{rebuild}$, at least initially. This approach increases the likelihood of success for rebuilding GOM cod and American plaice, and in the long-term, provides greater net benefits that would occur from rebuilt stocks. The proposed 10-year rebuilding programs for GOM cod and American plaice would also provide some flexibility and better address the needs of fishing communities compared to rebuilding programs that target an earlier end date. This is particularly important for GOM cod, which is a key groundfish stock, because constrained catch limits for GOM cod also impede the harvest of other groundfish stocks in the GOM. In addition, American plaice is a ''unit stock,'' meaning that there are not multiple stocks within the management unit. As a result, severely constrained catch limits for American plaice could result in lost groundfish fishing opportunities across the entire groundfish management area (GB, GOM, and Southern New England). Analysis completed for various rebuilding scenarios indicates that the proposed rebuilding programs would maximize the net present value (i.e., potential landings streams and future revenues) compared to other rebuilding scenarios that would target earlier end dates (see Section 7.4 of the Framework 51 Environmental Assessment). Thus, the proposed rebuilding strategies take into account, and address, the needs of fishing communities, while rebuilding the stocks as quickly as possible, and will increase the likelihood of achieving optimum yield in the fishery.

Rebuilding Plan Review Analysis

This rule also proposes to establish a rebuilding plan review analysis for both GOM cod and American plaice, in conjunction with the proposed revisions to the rebuilding programs. The proposed rebuilding plan review would occur for the respective stock if all three of the following conditions are met:

- The total catch limit has not been exceeded during the rebuilding program;
- New scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and
- $F_{rebuild}$ becomes less than 75% F_{MSY}.

If all three of the criteria described above are met, then the Council would task its appropriate body (e.g., Groundfish Plan Development Team or Scientific and Statistical Committee) to complete a rebuilding plan review that would provide the Council with new catch advice for GOM cod and/or American plaice. In priority order, the rebuilding plan review would:

1. Consider extending the rebuilding program to the maximum 10 years if a shorter time frame was initially adopted;
2. Review the biomass reference points; and
3. Provide catch limits based on $F_{rebuild}$ for these scenarios:

a. Under a 10-year rebuilding program (Item 1 above);

b. Under a review of the biomass reference points (Item 2 above); and

c. Under the existing rebuilding program.

The proposed rebuilding plan review analysis is intended to investigate why rebuilding has not occurred as expected. These types of analyses are typically already done as part of the current biennial review process for the groundfish program, or during a stock assessment, regardless of whether the above criteria are met for initiating the review. The proposed rebuilding plan review would not replace the current biennial review process; rather it would modify it in order to explicitly identify the criteria for initiating a review, or the specific analyses that should result from the review.

As noted during the development of Framework 51, we are concerned with the administrative burden of this measure, and whether there are any measurable benefits of the proposed rebuilding plan review analysis. The only basis for initiating the rebuilding plan review analysis, as proposed, would be a stock assessment that provided information to show that a stock was not on its rebuilding trajectory. As noted above, if a stock falls below its rebuilding trajectory, an investigation of why rebuilding has not occurred as expected would already occur during the stock assessment, or as part of the existing biennial review process.

In addition, the rebuilding programs adopted by Framework 51, and proposed in this rule, would also already use the maximum 10-year rebuilding period allowed. Thus, the first step in the rebuilding plan review (Item 1) is obsolete, and so is the task of providing $F_{rebuild}$-catch limits under an extended rebuilding program (Item 3a). Moreover, the only analyses that would be sufficient to provide revised biomass reference points, or provide new catch advice options based on revised biomass reference points (Item 3b) would be another stock assessment. The review of biomass reference points that is proposed in the rebuilding plan review (Item 2), in particular, may set unrealistic expectations for stakeholders. Since the proposed rebuilding plan review would *review* biomass reference points, but not necessarily *change* biomass reference points, the catch limits based on $F_{rebuild}$ (described by Item 3b) would also likely remain unchanged. By undertaking the rebuilding plan review, many stakeholders would likely expect that changes to the biomass reference points might occur as a result, which is not the case.

We are concerned about the approvability of this measure due to all of the issues noted above. As a result, we are requesting specific comments on

our concerns for this measure, including how the proposed analysis differs from the existing biennial review process for the groundfish program, or the existing stock assessment process, and what, if any, measurable benefit would be achieved through this administrative measure.

2. U.S./Canada Quotas

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are jointly managed with Canada. Each year, the Transboundary Management Guidance Committee (TMGC), which is a government-industry committee made up of representatives from the United States and Canada, recommends a shared quota for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit for each stock. The TMGC's harvest strategy also specifies that when stock conditions are poor, fishing mortality should be further reduced to promote stock rebuilding. The shared quotas are allocated between the United States and Canada based on a formula that considers historical catch (10-percent weighting) and the current resource distribution (90-percent weighting).

Assessments for the three transboundary stocks were completed in June 2013 by the Transboundary Resources Assessment Committee (TRAC). A detailed summary of the 2013 TRAC assessment can be found at: *http://www.nefsc.noaa.gov/saw/trac/.* The TMGC met in September 2013 to recommend shared quotas for 2014 based on the updated assessments, and the Council adopted the TMGC's recommendations in Framework 51. The proposed 2014 shared U.S./Canada quotas, and each country's allocation, are listed in Table 1. For a detailed discussion of the TMGC's 2014 catch advice, see the TMGC's guidance document at: *http://www2.mar.dfo-mpo.gc.ca/science/tmgc/tgd.html.*

Although the proposed 2014 shared quota for GB yellowtail flounder would be a 20-percent decrease from 2013, the U.S. quota for GB yellowtail flounder would increase by 53 percent in 2014 compared to 2013. This increase is due to the large increase of the U.S. share of the quota in 2014 (from 43 percent to 82 percent) due to higher distribution of this stock in U.S. waters compared to past years. The proposed 2014 shared U.S./Canada quotas for eastern GB cod and haddock are higher compared to 2013. The resulting U.S. quotas would increase by 60 percent for eastern GB cod and 166 percent for eastern GB haddock compared to 2013. The proposed 2014 catch limit for GB yellowtail flounder is also discussed in more detail in Item 3 of this preamble.

The U.S./Canada Resource Sharing Understanding requires that any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. quotas be deducted from the U.S. quota in the following fishing year. If FY 2013 catch information indicates that the U.S. fishery exceeded its quota for any of the shared stocks, we must reduce the FY 2014 U.S. quota for that stock in a future management action, as close to May 1, 2014, as possible. If any fishery that is allocated a portion of the U.S. quota exceeds its allocation, and causes an overage of the overall U.S. quota, the overage reduction would be applied to that fishery's allocation in the following fishing year. For example, if the scallop fishery exceeded its allocation of GB yellowtail flounder, which caused the overall U.S. quota to be exceeded, then the pound-for-pound reduction would be applied to the scallop fishery's allocation for the next fishing year. This ensures that catch by one component of the fishery does not negatively affect another component of the fishery.

Table 1—Proposed 2014 U.S./Canada Quotas (mt, live weight) and Percent of Quota Allocated to Each Country

Quota	Eastern GB Cod	Eastern GB Haddock	GB Yellowtail Flounder
Total Shared Quota	700	27,000	400
U.S. Quota	154 (22%)	10,530 (39%)	328 (82%)
Canada Quota	546 (78%)	16,470 (61%)	72 (18%)

3. Catch Limits

The catch limits proposed in this action can be found in Tables 2 through 8. A brief summary of how these catch limits were developed is provided below. More detail on the proposed catch limits for each groundfish stock can be found in Appendix III to the Framework 51 EA (see **ADDRESSES** for information on how to get this document).

Last year, Framework 50 adopted FY 2013–2015 catch limits for all groundfish stocks, except for the U.S./Canada stocks, which must be set every year, and white hake. A benchmark stock assessment for white hake was completed in February 2013, and the results of this assessment became available after the Council took final action on Framework 50. As a result, the Council was not able to incorporate the new benchmark results in time for setting FY 2013–2015 catch limits. Instead, we implemented an emergency action for FY 2013 to increase the white hake catch limit based on the February 2013 assessment, and give the Council time to respond to the new assessment. As described in Framework 51, this rule now proposes to implement FY 2014–2016 catch limits for white hake based on the recent stock assessment, and consistent with the recommendation of the Council's Scientific and Statistical Committee (SSC). This rule also proposes to incorporate the FY 2014 shared U.S./Canada quotas (see Item 2 in this preamble), which are discussed in more detail below. For all stocks, except GB cod, GB haddock, GB yellowtail flounder, and white hake, the

catch limits included in this action are identical to those previously adopted in Framework 50. There is no catch limit proposed for FY 2015 or FY 2016 for many groundfish stocks. These catch limits will be specified in a future management action once updated scientific information becomes available.

Overfishing Limits and Acceptable Biological Catches

The overfishing limit (OFL) serves as the maximum amount of fish that can be caught in a year without harming the stock. The OFL for each stock is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). The OFL does not account for scientific uncertainty, so the Council's SSC typically recommends an acceptable biological catch (ABC) that is lower than the OFL in order to account for scientific uncertainty. Usually, the greater the amount of scientific uncertainty, the lower the ABC is set compared to the OFL. For GB cod, haddock, and yellowtail flounder, the total ABC is further reduced by the amount of the Canadian quota (see Table 1 for the Canadian share of these stocks). The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

GB Yellowtail Flounder

Both the 2013 TRAC assessment and the SSC noted concerns for the poor performance of the stock assessment model for GB yellowtail flounder. The assessment model has a strong retrospective pattern, which causes stock size to be overestimated and fishing mortality to be underestimated. Despite concerns for the uncertainties in the assessment, and the performance of the assessment model, however, both the TRAC and the SSC concluded that stock conditions are poor. Recruitment for the stock remains low, and although the quota has been reduced in recent years due to continually declining stock conditions, all of the available information indicates that the stock has not responded to these reductions. In addition, although the assessment is highly uncertain, it was not rejected by either the TRAC or SSC.

The 2013 TRAC assessment concluded that 2014 catches well below 500 mt are likely needed to achieve the TMGC's harvest strategy for GB yellowtail flounder, and that catch should be reduced as much as possible from the 2013 quota of 500 mt. Consistent with the TRAC assessment, the SSC recommended that catches not exceed 500 mt in FY 2014, and strongly recommended that catch be reduced as much as practicable in light of concerns about the status of the stock. The SSC also concluded that the OFL for GB yellowtail flounder cannot be reliably estimated due to poor performance of the assessment model, and as a result determined that the OFL is unknown.

When reviewing and approving any quota, the Magnuson-Stevens Act requires us to determine that the proposed quota has a sufficient probability of preventing overfishing. To do this, we build off of the SSC's recommendation of an OFL and ABC. When absolute values for the OFL are not readily available, any quota recommendation must still meet the necessary requirements, and have at least a 50-percent probability of preventing overfishing. Both the TRAC results and the SSC's recommendation provide the necessary directionality of the 2014 quota compared to 2013 as well as information that can be used to determine the appropriate 2014 catch limit that would have a sufficient probability of preventing overfishing.

The results of the assessment model that are not adjusted for the retrospective pattern indicate that 2014 catches at the fishing mortality limit would be 562 mt. However, given the poor performance of the assessment model, and because these results are not adjusted for the retrospective pattern in the assessment, it is reasonable to conclude that these results may be biased high. Because the unadjusted model results from the assessment are likely biased high, the 2014 quota should have a greater uncertainty buffer than the Council's standard default control rule (75% F_{MSY}). A 2014 catch limit of 400 mt is the maximum catch that would provide an additional uncertainty buffer from the unadjusted model results to further account for the uncertainties in the assessment. On the other hand, when the model results are adjusted for the retrospective pattern, 2014 catches at the fishing mortality limit would be 123 mt. In discussing the poor performance of the assessment model, though, the SSC questioned the magnitude of stock depletion, and noted that catch and survey trends may suggest less concern is warranted than indicated by the assessment model. As a result, the model results adjusted for the retrospective pattern may be biased low.

Recent catches can also be used to evaluate what 2014 catch level would be consistent with the TRAC and SSC's recommendations to reduce catches as much as possible/practicable. Catches in 2012, which is the most recent fishing year in which final catch information is available, were approximately 480 mt, of which the United States caught 385 mt. The U.S. share of the quota increases in 2014 from 43 percent in 2013 to 82 percent in 2014, and as a result, the 2014 TMGC recommendation of 400 mt would result in a U.S. quota of 328 mt, which is nearly equal to the FY 2012 total U.S. catch. Similarly, although final 2013 catch estimates will not be available until September 2014, if total 2013 catches are between 300–400 mt, a quota above 400 mt in 2014 would likely allow catches to increase compared to recent years, which would not be consistent with the TRAC and SSC's recommendation that catches be reduced.

The FY 2013 catch limit for GB yellowtail flounder was 500 mt. Because the stock has declined further this past year, a status quo catch limit in FY 2014 would not appropriately account for this stock decline. The quota was reduced by more than 40 percent from 2011 to 2012, and again from 2012 to 2013, yet the 2013 TRAC assessment indicates that the stock has not responded to these reductions. This suggests that the 2014 quota should be further reduced from 2013 to increase the likelihood that stock conditions will improve.

Based on all of these factors, we determined that 400 mt was the total ABC for GB yellowtail flounder that would have a sufficient probability of preventing overfishing, reduce catch consistent with the TRAC and SSC advice, and provide for some stock growth. This determination was provided to the TMGC in September 2013, and served as the basis for the TMGC recommending 400 mt as the 2014 shared quota. Despite alternative catch limits put forward by the Council's Groundfish Oversight Committee, the Council ultimately adopted the TMGC's recommendation in Framework 51, and this action proposes a FY 2014 catch limit of 400 mt for GB yellowtail flounder. Based on the best scientific information available, a quota of 400 mt would have at least a median probability of preventing overfishing, and would also increase the likelihood that stock conditions will improve. The proposed quota of 400 mt would be a 20-percent reduction compared to the 2013 quota, which is consistent with the TRAC and SSC's recommendation to reduce catches as much as practicable.

In response to concerns for the poor performance of the GB yellowtail flounder stock assessment model, the TRAC will conduct a benchmark assessment April 14–18, 2014, to examine an alternative method for

estimating abundance and setting catch limits. The results of the benchmark assessment will be incorporated for setting 2015 catches for GB yellowtail flounder. More information on the 2014 benchmark assessment can be found here: *http://www.nefsc.noaa.gov/saw/trac/.*

Annual Catch Limits

The U.S. ABC for each stock (for each fishing year) is divided among the various fishery components to account for all sources of fishing mortality. First, expected catch from state waters and the ''other'' sub-component is deducted from the U.S. ABC. These sub-components are not subject to specific catch controls by the Groundfish Plan. As a result, the state waters and ''other'' sub-components are not allocations, and these components of the fishery are not subject to accountability measures if the catch limits are exceeded. After the state and other sub-components are deducted, the remaining portion of the U.S. ABC is the amount available to the fishery components that receive an allocation for the stock. Components of the fishery that receive an allocation are subject to catch controls by the Groundfish Plan, including accountability measures that are triggered if they exceed their respective catch limit during the fishing year.

Once the U.S. ABC is divided, sub-annual catch limits (sub-ACLs) are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability and precision of management measures, adequacy of catch monitoring, latent effort, and catch of groundfish in non-groundfish fisheries. The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fisheries, state waters, and non-groundfish fisheries) are counted against the ACL for each stock.

For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in sectors and the cumulative PSCs associated with those sectors. The preliminary sector and common pool sub-ACLs proposed in this action are based on FY 2014 PSCs and FY 2013 sector rosters. FY 2014 sector rosters will not be finalized until May 1, 2014, because individual permit holders have until the end of FY 2013 to drop out of a sector and fish in the common pool fishery for FY 2014. Therefore, it is possible that the sector and common pool catch limits proposed in this action may change due to changes in the sector rosters. If changes to the sector rosters occur, updated catch limits will be published as soon as possible in FY 2014 to reflect the final FY 2014 sector rosters as of May 1, 2014.

Common Pool Total Allowable Catches

The common pool sub-ACL for each stock (except for Southern New England/Mid-Atlantic (SNE/MA) winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) is further divided into trimester total allowable catches (TACs). The distribution of the common pool sub-ACLs into trimesters was adopted by Amendment 16 and is based on recent landing patterns. Once we project that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock is closed for the remainder of the trimester to all common pool vessels fishing with gear capable of catching the pertinent stock. Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester. Overages of the Trimester 1 or Trimester 2 TAC will be deducted from the Trimester 3 TAC. Any overages of the total common pool sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC may not be carried over into the following fishing year. Table 5 summarizes the common pool trimester TACs proposed in this action.

Incidental catch TACs are also specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B Days-at-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Tables 6 through 8 summarize the distribution of the common pool sub-ACLs to each special management program, and the Incidental Catch TACs for each stock that are proposed in this action.

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Table 2 — Proposed FY 2014 Catch Limits (mt, live weight)

Stock	OFL	U.S. ABC	Total ACL	Groundfish Fishery	Preliminary Sector	Preliminary Common Pool	Recreational Groundfish	Midwater Trawl Fishery	Scallop Fishery	Small-Mesh Fisheries	State Waters sub-component	Other sub-component
			A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	3,570	2,506	1,867	1,769	1,738	31					20	78
GOM Cod	1,917	1,550	1,470	1,316	812	18	486				103	51
GB Haddock	46,268	35,699	18,312	17,171	17,116	56		179			192	769
GOM Haddock	440	341	323	307	218	2	87	3			5	7
GB Yellowtail Flounder	unknown	400	318.1	254.5	251.5	3.1			50.9	6.1	0.0	6.6
SNE/MA Yellowtail Flounder	1,042	700	665	564	469	95			66		7	28
CC/GOM Yellowtail Flounder	936	548	523	479	466	13					33	11
American Plaice	1,981	1,515	1,442	1,382	1,357	24					30	30
Witch Flounder	1,512	783	751	610	599	11					23	117
GB Winter Flounder	4,626	3,598	3,493	3,385	3,364	21					0	108
GOM Winter Flounder	1,458	1,078	1,040	715	688	26					272	54
SNE/MA Winter Flounder	3,372	1,676	1,612	1,210	1,074	136					235	168
Redfish	16,130	11,465	10,909	10,565	10,523	42					115	229
White Hake	6,082	4,642	4,417	4,278	4,247	30					46	93
Pollock	20,554	16,000	15,304	13,224	13,131	93					960	1,120
N. Windowpane Flounder	202	151	144	98	na	98					2	44
S. Windowpane Flounder	730	548	527	102	na	102			183		55	186
Ocean Pout	313	235	220	197	na	197					2	21
Atlantic Halibut	180	109	106	57	na	57					44	5
Atlantic Wolffish	94	70	65	62	na	62					1	3

Table 3 — Proposed FY 2015 Catch Limits (mt, live weight)

Stock	OFL	U.S. ABC	Total ACL	Groundfish Fishery	Preliminary Sector	Preliminary Common Pool	Recreational Groundfish	Midwater Trawl Fishery	Scallop Fishery	Small-Mesh Fisheries	State Waters sub-component	Other sub-component
			A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	4,191	2,506	2,387	2,262	1,738	31					25	100
GOM Cod	2,639	1,550	1,470	1,316	812	18	486				103	51
GB Haddock	56,293	43,606	41,526	38,940	38,814	126		406			436	1,744
GOM Haddock	561	435	412	392	278	2	111	4			6	9
GB Yellowtail Flounder												
SNE/MA Yellowtail Flounder	1,056	700	665	566	471	95			64		7	28
CC/GOM Yellowtail Flounder	1,194	548	523	479	466	13					33	11
American Plaice	2,021	1,544	1,470	1,408	1,383	25					31	31
Witch Flounder	1,846	783	751	610	599	11					23	117
GB Winter Flounder												
GOM Winter Flounder												
SNE/MA Winter Flounder	4,439	1,676	1,612	1,210	1,074	136					235	168
Redfish	16,845	11,974	11,393	11,034	10,990	44					120	239
White Hake	6,237	4,713	4,417	4,278	4,247	30					46	93
Pollock												
N. Windowpane Flounder	202	151	144	98		98					2	44
S. Windowpane Flounder	730	548	527	102		102			183		55	186
Ocean Pout	313	235	220	197		197					2	21
Atlantic Halibut	198	119	116	62		62					48	6
Atlantic Wolffish	94	70	65	62		62					1	3

*Shaded cells indicate no catch limit has been set yet for the stocks. These catch limits will be set in a future action.

Table 4 — Proposed FY 2016 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

Stock	OFL	U.S. ABC	Total ACL	Groundfish Fishery	Preliminary Sector	Preliminary Common Pool	Recreational Groundfish	Midwater Trawl Fishery	Scallop Fishery	Small-Mesh Fisheries	State Waters sub-component	Other sub-component
			A to H	A+B+C	A	B	C	D	E	F	G	H
White Hake	6,314	4,645	4,420	4,280	4,250	30					46	93

**FY 2016 catch limits are only proposed for white hake in this action. FY 2016 catch limits for all other groundfish stocks will be set in a future action.

Table 5—Proposed FYs 2014-2016 Common Pool Trimester TACs (mt, live weight)

Stock	2014			2015			2016		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	7.6	11.3	11.6	9.8	14.4	14.8			
GOM Cod	4.9	6.6	6.8	4.9	6.6	6.8			
GB Haddock	15.0	18.3	22.2	34.0	41.6	50.4			
GOM Haddock	0.51	0.49	0.88	0.6	0.6	1.1			
GB Yellowtail Flounder	0.6	0.9	1.6						
SNE/MA Yellowtail Flounder	19.9	35.0	39.7	19.9	35.1	39.9			
CC/GOM Yellowtail Flounder	4.7	4.7	4.0	4.7	4.7	4.0			
American Plaice	5.8	8.7	9.7	5.9	8.9	9.9			
Witch Flounder	2.9	3.3	4.5	2.9	3.3	4.5			
GB Winter Flounder	1.7	5.1	14.7						
GOM Winter Flounder	9.8	10.0	6.6						
Redfish	10.5	13.0	18.4	10.9	13.6	19.2			
White Hake	11.6	9.4	9.4	11.7	9.6	9.6	11.6	9.4	9.4
Pollock	26.0	32.5	34.3						

**Shaded cells indicate that no catch limit has been set yet for these stocks. These catch limits will be set in a future management action.

Table 6—Proposed Common Pool Incidental Catch TACs for FYs 2014-2015 (mt, live weight)

Stock	Percentage of Common Pool sub-ACL	2014	2015
GB Cod	2	0.6	0.8
GOM Cod	1	0.2	0.2
GB Yellowtail Flounder	2	0.06	
CC/GOM Yellowtail Flounder	1	0.1	0.1
American Plaice	5	1.2	1.2
Witch Flounder	5	0.5	0.5
SNE/MA Winter Flounder	1	1.4	1.4

Table 7—Percentage of Incidental Catch TACs Distributed to Each Special Management Program

Stock	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern US/CA Haddock SAP
GB Cod	50%	16%	34%
GOM Cod	100%		
GB Yellowtail Flounder	50%		50%
CC/GOM Yellowtail Flounder	100%		
American Plaice	100%		
Witch Flounder	100%		
SNE/MA Winter Flounder	100%		
White Hake	100%		

Table 8—Proposed FYs 2014-2015 Incidental Catch TACs for Each Special Management Program (mt, live weight)

Stock	Regular B DAS Program		Closed Area I Hook Gear Haddock SAP		Eastern U.S./Canada Haddock SAP	
	2014	2015	2014	2015	2014	2015
GB Cod	0.3	0.3	0.1	0.1	0.2	0.2
GOM Cod	0.2	0.2				
GB Yellowtail Flounder	0.03				0.03	
CC/GOM Yellowtail Flounder	0.1	0.1				
American Plaice	1.2	1.2				
Witch Flounder	0.5	0.5				
SNE/MA Winter Flounder	1.4	1.4				

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4. Small-Mesh Fisheries Accountability Measure

For FY 2013 and beyond, Framework 48 adopted an allocation of GB yellowtail flounder for the small-mesh fisheries. For this allocation, the small-mesh fisheries were defined as vessels fishing with otter trawl gear with a codend mesh size of 5 inches (12.7 cm) or less. The target species for these small-mesh fisheries typically include squid and whiting. Framework 48 adopted a GB yellowtail flounder allocation for these fisheries due to concerns for the low stock size of GB yellowtail flounder, and that these fisheries have accounted for a larger portion of the total catch in recent years. Corresponding accountability measures (AMs) were not adopted last year because development of AMs required close coordination with the Mid-Atlantic Fishery Management Council, which is responsible for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. As a result, Framework 48 presumed that AMs would be developed by the respective Fishery Management Plans in a future management action through coordination of the New England and Mid-Atlantic Councils. Thus, Framework 51 and this rule now propose to establish AMs for GB yellowtail flounder for the small-mesh fisheries, and apply them retroactively to FY 2013 catches.

The U.S./Canada Resource Sharing Understanding requires that, if the U.S. quota for GB yellowtail flounder is exceeded, then the U.S. quota for the following fishing year must be reduced by the amount of the overage. The pound-for-pound reduction is applied to the sub-ACL of the fishery component that caused the overage. For example, if the small-mesh fisheries caused an overage of the U.S. quota in Year 1, the small-mesh fisheries sub-ACL would be reduced by the amount of the overage in the next fishing year (Year 2). This pound-for-pound reduction serves as a reactive AM. However, the small-mesh fisheries are currently required to discard all GB yellowtail flounder caught. Thus, a pound-for-pound reduction of the quota, without corresponding measures to help reduce catches of GB yellowtail flounder, would not appropriately mitigate an overage, or prevent future overages from occurring.

This rule proposes an additional reactive AM that would require vessels fishing with bottom otter trawl gear with a codend mesh size of less than 5 in (12.7 cm) to fish with selective trawl gear in the GB yellowtail flounder stock area (Statistical areas 522, 525, 561, and 562) if the small-mesh fisheries sub-ACL is exceeded. Currently, approved gear types include the raised footrope trawl, separator trawl, rope trawl, Ruhle trawl, and mini-Ruhle trawl. Additional gear types can be authorized by the Council in a future management action, or approved by the Regional Administrator through the gear-approval process defined at § 648.85(b)(6). The proposed AM would be triggered regardless of whether the total ACL is exceeded. With the exception of the GB yellowtail flounder AM for the scallop fishery, this approach to triggering an AM is consistent with how other fishery components are treated (i.e., commercial and recreational groundfish fisheries and mid-water trawl fishery). AMs linked to the sub-ACLs of the fishery ensure that each component is held responsible for its catch of the respective stock.

The proposed AM would only be implemented at the start of a fishing year (May 1). The AM would not be implemented in the middle of the fishing year due to the potential for disproportionate impacts on the small-mesh fisheries, which operate at different times on GB, depending on the target species. If an overage of the small-mesh fisheries sub-ACL in Year 1 occurs, the proposed AM would be triggered:

- *At the start of Year 2* if, based on reliable data, NMFS determined inseason during Year 1 that the small-mesh fisheries sub-ACL had been exceeded; or

• *At the start of Year 3,* if final catch estimates available after the end of Year 1 indicate that the small-mesh fisheries sub-ACL was exceeded in Year 1.

The proposed AM would ensure that there are sufficient measures in place to reduce catches of GB yellowtail flounder, should an overage occur. This AM also ensures that the small-mesh fisheries catch of GB yellowtail flounder does not negatively impact other components of the fishery. Further, because GB yellowtail flounder is jointly managed with Canada, it is especially important that the United States implement sufficient management measures to prevent overages of the U.S. TAC, and if overages occur, to sufficiently mitigate that overage.

5. Inseason Adjustment of U.S./Canada Quotas

In 2013, the TMGC developed a U.S./Canada quota trading mechanism that would provide more flexibility in setting annual U.S./Canada quotas in order to create additional fishing opportunities. Framework 51 proposes to adopt a 1-year mechanism for FY 2014 that would allow the Regional Administrator, in consultation with the Council, to adjust the U.S./Canada quotas inseason consistent with any trade agreed upon with Canada. Any additional quota that the United States receives from a trade would be allocated to all of the fishery components consistent with the current ABC distribution used by the Council in this action for setting groundfish catch limits. Under this proposed approach, both groundfish and non-groundfish fisheries would potentially benefit from additional quota, regardless of what fishery gave up quota for the trade. For example, if the United States trades away eastern GB cod in return for GB yellowtail flounder, the scallop and small-mesh fisheries would benefit from the additional GB yellowtail flounder quota, even though the commercial groundfish fishery was the only component to give away its cod quota.

The Canadian fishing year is based on the calendar year, while the U.S. groundfish fishing year is May 1–April 30. The difference between the U.S. and Canadian fishing years allows a trade to occur for adjacent years. Under the proposed mechanism, a trade could occur towards the end of the Canadian fishing year, when the U.S. fishing year is only half completed. For example, if Canada underharvests its quota, it could trade away its surplus quota to the United States in the current fishing year, in return for additional quota from the United States for the upcoming fishing year. Under this proposed mechanism, the United States would only receive additional quota in the current fishing year, and would only trade away its quota for the upcoming fishing year, prior to the start of the fishing year, and before allocations are made to components of the U.S. fishery.

The proposed mechanism would exist only for quota trades made by, or before the end of, FY 2014. The Council adopted a 1-year only trading mechanism for several reasons:

1. The Council wished to determine whether trades between the United States and Canada are practical under the proposed approach; and

2. The Council is considering a more sophisticated trading mechanism as part of Amendment 18 to the Groundfish Plan that would better ensure the entities trading away quota would directly receive quota in return.

6. Distribution of Eastern/Western Georges Bank Haddock Sector Allocations

Eastern GB haddock is a sub-unit of the total GB haddock stock, and the total ABC for GB haddock includes the shared U.S./Canada quota for eastern GB haddock. A portion of a sector's GB haddock allocation may only be caught in the Eastern U.S./Canada Area, and the remaining portion of their total GB haddock allocation can be caught only in the Western U.S./Canada Area. This restriction was adopted by Amendment 16 in order to cap the amount of GB haddock that a sector could catch in the eastern U.S./Canada Area and help prevent the United States from exceeding its eastern GB haddock quota. However, limiting the amount of haddock that could be caught in the western U.S./Canada Area could unnecessarily reduce flexibility, and potentially limit fishing in the area, even if a sector has not caught its entire GB haddock allocation. Ultimately, this could prevent the fishery from achieving optimum yield for the GB haddock stock.

To address this concern, this rule proposes to allow sectors to ''convert'' their eastern GB haddock allocation into western GB haddock allocation. This measure would follow a process similar to the one used for processing sector trades. Sectors could convert eastern GB haddock allocation into western GB haddock allocation at any time during the fishing year, and up to 2 weeks into the following fishing year to cover any overage during the previous fishing year. A sector's proposed allocation conversion would be referred to, and approved by, NMFS based on general issues, such as whether the sector is complying with reporting or other administrative requirements, including weekly sector reports, or member vessel compliance with Vessel Trip Reporting requirements. Based on these factors, we would notify the sector if the conversion is approved or disapproved. At this time, NMFS proposes to use member vessel compliance with Vessel Trip Reporting requirements as the basis for approving, or disapproving a re-allocation of Eastern GB quota to the Western U.S./Canada Area. This is identical to the process used for reviewing, and approving, quota transfer requests between sectors.

The responsibility for ensuring that sufficient allocation is available to cover the conversion is the responsibility of the sector. This measure would also extend to state-operated permit banks. Any conversion of eastern GB haddock allocation into western GB haddock allocation may be made only within a sector, or permit bank, and not between sectors or permit banks. In addition, once a portion of eastern GB haddock allocation has been converted to western GB haddock allocation, that portion of allocation remains western GB haddock for the remainder of the fishing year. Western GB haddock allocation may not be converted to eastern GB haddock allocation. This proposed measure does not change the requirement that sector vessels may only catch their eastern GB haddock allocation in the Eastern U.S./Canada Area, and may only catch the remainder of their GB haddock allocation in the Western U.S./Canada Area.

This measure would provide additional flexibility for sectors to harvest their GB haddock allocations, without increasing the risk of biological harm to the stock. This measure may also create additional fishing opportunities for sector vessels on a healthy groundfish stock, and better help the fishery achieve optimum yield for this stock. The total catch limit for GB haddock includes the U.S. quota for eastern GB haddock, so this proposed measure would not jeopardize the total ACL for GB haddock, or the U.S. quota for the eastern portion of the stock. A sector would also still be required to stop fishing in the Eastern U.S./Canada Area once its entire eastern GB haddock allocation was caught, or in the Western U.S./Canada Area once its western GB haddock allocation was caught, or at least until it leased in additional quota. This ensures sufficient accountability for sector catch that will help prevent overages of any GB haddock catch limit.

7. Revised Discard Estimation for Georges Bank Yellowtail Flounder

Landings and discards of a stock count against a sector's allocation. A sector's discard rate for a stock is estimated by extrapolating discards of that stock on observed fishing trips. For each sector and stock, a discard rate is calculated for each combination of gear type and stock area (known as a ''discard strata''). For example, a sector receives a unique discard rate for yellowtail flounder caught on trips fishing with bottom otter trawl gear in the GB yellowtail flounder stock area (Statistical areas 522, 525, 561, and 562). In Framework 48 to the Groundfish Plan, the Council proposed to change the stratification of discard estimates for GB yellowtail flounder by creating two separate discard strata for GB yellowtail flounder: (1) A stratum for statistical area 522 by itself; and (2) a stratum for statistical areas 525, 561, and 562 combined. This measure was developed, in part, because there were concerns that the substantial reductions in the GB yellowtail flounder quota for FY 2013 would severely constrain sector vessels. Under the existing stratification (a single stratum for statistical areas 522, 525, 561, and 562 combined), the Council was concerned that even if some sector vessels fished in areas on GB where little yellowtail flounder is caught, in order to reduce catch of GB yellowtail flounder, other vessels fishing on other parts of GB, with higher catch rates of yellowtail flounder, would impact the discard rate for the entire sector. As a result, creating a separate strata for statistical area 522 and statistical areas 525, 561, and 562 combined would more accurately reflect fishing effort in these areas.

Based on public comments received on the Framework 48 proposed rule, we disapproved the change to the stratification of GB yellowtail flounder discards because it would increase the costs and burden of monitoring, and potentially increase uncertainty of catch estimates, without any measurable benefit for sectors. Industry members opposed this measure in Framework 48 because they said it would not benefit groundfish vessels. We did not receive any comments in support of this measure. Although finer scale discard strata may have allowed discard estimates to more closely reflect actual discard rates of yellowtail flounder in different areas of GB, we determined that the new discard strata would not have provided any benefits that sectors could not realize through the existing discard rate strata (by only fishing in areas of GB with low catches of GB yellowtail flounder). For more information on this measure, as proposed in Framework 48, see the proposed and interim final rules for Framework 48 here: *http://www.nero.noaa.gov/sfd/sfdmultifr.html#yr2013*.

Despite the disapproval in Framework 48, this rule proposes to change the stratification of GB yellowtail flounder discards for sectors and create two separate discard strata for GB yellowtail flounder: (1) A stratum for statistical area 522; and (2) a stratum for statistical areas 525, 561, and 562. This proposed measure is identical to the measure that was proposed, and disapproved, in Framework 48. The proposed measure would only apply to inseason sector monitoring, and would only apply to GB yellowtail flounder. The proposed measure would not change the stratification of discards for the common pool fishery, or any non-groundfish fishery.

Although the stratification of discards could be changed for all gear types, the proposed measure is primarily intended for trawl vessels, which catch the majority of GB yellowtail flounder. This rule also proposes to give the Regional Administrator authority for determining whether this change to the stratification for GB yellowtail flounder is needed, or not, for non-trawl gears. If the Regional Administrator determines that the change to stratification is not necessary for other, non-trawl gears, these gears types could be excluded from the proposed stratification. At this time, we have determined that the revised stratification for GB yellowtail flounder should be proposed only for trawl gear.

Analysis of the proposed measure completed by the Council in the Framework 51 Environmental Assessment indicates that if the proposed discard strata for GB yellowtail flounder had been used in FY 2010 and FY 2011, the total discards estimates would have increased by 5 percent, and declined by less than 1 percent, respectively. Thus, based on this analysis, changing the stratification used for monitoring GB yellowtail flounder would not likely lead to large changes in the total discard estimates; however, it does have the potential to increase the variance in discard estimates, which could increase monitoring coverage levels necessary to accurately monitor sector catch.

The impacts of the proposed discard strata on individual sectors would likely vary. The Framework 51 analysis shows that GB yellowtail flounder discard estimates for some sectors would decrease by up to 40 percent, while discard estimates for other sectors would increase by up to 25 percent. As a result, the economic impacts of the proposed measure would be mixed. For those sectors that would receive a lower discard rate, vessels would expend less GB yellowtail flounder quota on each trip, which would increase net revenues, and potentially allow for more fishing. For sectors that would receive an increased discard rate, the opposite would be true, and the proposed measure could reduce net revenues. Sections 7.1.2.3.2 and 7.4.2.3.2 of the Framework 51 Environmental Assessment have additional details on the impacts of the proposed measure.

We are concerned that if a new discard strata is developed for GB yellowtail flounder, it could set a precedent for revising discard strata for other quota-limiting stocks (like GOM cod). Each additional discard strata created for monitoring sector catch increases the administrative burden on NMFS, and has the potential for increasing the monitoring coverage levels necessary to accurately monitor catch if it increases the variance of discard estimates. We are concerned for the approvability of this measure for all of these reasons, in addition to the reasons this measure was initially disapproved in Framework 48.

When the Council took final action on Framework 51, and adopted the proposed revisions to the GB yellowtail flounder discard strata, it also passed a motion that the measure be implemented ''unless NMFS develops a discard tool to address this issue through the sectors.'' The Council's motion was unclear how this determination would be made, and who would make this determination whether to implement the proposed revisions to the GB yellowtail flounder discard strata in Framework 51, or to instead, rely on the discard tool developed by NMFS.

Since the Council took final action on Framework 51, we developed a discard tool that sectors can use in order to more appropriately allocate discards among sector vessels based on individual fishing activity. We held a sector workshop on February 20, 2014, to present the discard tool to the sectors, and we received positive feedback from sector representatives. Based on the results of the February 20, 2014, sector workshop, we believe that the discard tool for sectors to allocate discards to their members provides a better solution than the proposed stratification for GB yellowtail flounder, and more sufficiently addresses the problem for the reasons provided below.

- Each sector can decide whether to use the discard tool and, if so, can

decide what stocks, and gear types, to apply the methodology.

- Each fishing year, or during the fishing year, a sector could make changes to how the discard tool is used based on the needs and interests of the sector.
- A sector could use the discard tool for as many, or as few, allocated stocks as it desires, whereas the discard strata proposed in Framework 51 would only serve as a patch fix for GB yellowtail flounder.
- The discard tool uses only exiting data already available to managers; no additional data would have to be collected.
- The discard tool does not require any regulatory changes, does not have the potential to increase variance of discard estimates, and thus, does not have the potential to increase monitoring coverage levels.

We are requesting specific comments to address our concerns about the proposed revisions to the GB yellowtail flounder discard strata, whether these proposed revisions would provide sectors with any measurable benefits, and whether the discard tool would sufficiently address sector needs in lieu of the Framework 51 proposed measure.

8. Prohibition on Possession of Yellowtail Flounder by the Limited Access Scallop Fishery

Currently, limited-access scallop vessels are required to land all legal-sized yellowtail flounder. This measure was adopted beginning in FY 2010 in order to reduce bycatch of yellowtail flounder in the scallop fishery consistent with National Standard 9 of the Magnuson-Stevens Act, which requires bycatch be reduced as much as practicable. Landing yellowtail flounder is not cost effective for scallop vessels, so, the current requirement was intended to remove any incentive for scallop vessels to ''target'' yellowtail flounder. With the respect to this measure, it is important to note that scallop vessels do not ''target'' yellowtail flounder in the traditional sense; rather they may choose not to move out of an area with high levels of yellowtail flounder bycatch. Recent information shows that compliance with the current landing requirement has been extremely low probably due, in part, because landing yellowtail flounder is not cost effective for scallop vessels. The current landing requirement is likely difficult to enforce because it requires law enforcement officers to intercept scallop vessels at sea during the act of illegally discarding legal-sized yellowtail flounder.

Despite documented low compliance rates, industry reports have recently indicated that a very small number of scallop vessels may be ''targeting'' yellowtail flounder. To address this possibility, this action proposes to remove the landing requirement, and prohibit the possession of all yellowtail flounder by limited access scallop vessels. Prohibiting possession of yellowtail flounder is intended to remove the incentive for scallop vessels to ''target'' yellowtail flounder since they could not be retained, or sold, which is expected to ultimately reduce yellowtail flounder mortality.

National Standard 9 of the Magnuson-Stevens Act requires that bycatch be reduced as much as practicable, where bycatch is defined as ''fish harvested in a fishery, but that are not sold or kept,'' and refers to economic and regulatory discards. Thus, the proposed measure to prohibit possession of yellowtail flounder would actually increase bycatch, as it is defined in the Magnuson-Stevens Act, compared to the existing requirement to land all legal-sized yellowtail flounder. However, for the purposes of reviewing the proposed measure, a more important consideration is the total fishing mortality for each yellowtail flounder stock. If the proposed action would reduce fishing effort on yellowtail flounder, then total fishing mortality for yellowtail flounder stocks would be expected to decrease. This would provide important conservation benefits, particularly for GB yellowtail flounder, which has declined in recent years.

The recent 2012 stock assessment for SNE/MA yellowtail flounder reduced the discard mortality rate from 100 percent to 90 percent for commercial catches. As a result, prohibiting possession of this stock by limited access scallop vessels has the potential to slightly reduce mortality on this yellowtail flounder stock assuming that some of the discarded fish survive. The stock assessments for Cape Cod/Gulf of Maine and GB yellowtail flounder assume a 100-percent discard mortality rate, so it is unclear whether zero possession has the same potential benefits for these yellowtail stocks as the SNE/MA stock.

We are requesting specific comment on whether the current landing requirement truly created an incentive to ''target'' yellowtail flounder, thereby increasing total mortality on the stocks, and whether the proposed measure would be expected to decrease total fishing mortality on each of the yellowtail flounder stocks.

9. 2014 Windowpane Flounder Accountability Measures

In fall 2013, final catch information became available for FY 2012. These final catch estimates indicated that the northern windowpane flounder ACL was exceeded by 28 percent, and the southern windowpane flounder ACL was exceeded by 36 percent. The FY 2012 final catch report can be found here: *http://www.nero.noaa.gov/ro/fso/reports/Groundfish_Catch_Accounting.htm.*

These FY 2012 overages will automatically trigger AMs beginning in FY 2014 that require selective trawl gear to be used in certain parts of the stock areas for both windowpane flounder stocks. For the entire 2014 fishing year, common pool and sector vessels fishing on a groundfish trip with trawl gear will be required to use one of the following selective trawl gears when fishing in the AM areas: (1) Haddock separator trawl; (2) Ruhle trawl; (3) mini-Ruhle trawl; or (4) rope separator trawl. There are no restrictions on longline or gillnet gear. These gear restrictions will apply in the large AM areas for both northern and southern windowpane flounder because the overages were more than 20 percent of the ACL for both stocks (maps and coordinates of the AM areas can be found here: *http://www.nero.noaa.gov/sfd/sfdmulti.html*). As a reminder, sectors cannot request an exemption from these AMs. As long as the catch limits are not exceeded in FY 2014, the AM would be removed at the start of the 2015 fishing year, beginning on May 1, 2015. These AMs are not part of Framework 51, but are proposed in conjunction with Framework 51 for expediency purposes.

The FY 2014 windowpane flounder AMs will not impact non-groundfish fisheries because these fisheries did not have an allocation of either windowpane flounder stock for FY 2012. Although these non-groundfish fisheries may have contributed to the 2012 overages, the commercial groundfish fishery will be held 100-percent accountable. For FY 2013 and beyond, at the Council's recommendation, we approved the allocation of southern windowpane to the scallop fishery and other non-groundfish fisheries fishing with bottom otter traw gear with codend mesh of 5 inches (12.7 cm) or greater. Allocating this stock to other fisheries will help ensure that each fishery is held accountable for their catch in the future, and that catch from one fishery cannot negatively impact another. For FY 2013 and beyond, any AM triggered for southern windowpane will only apply

to the fishery that caused the overage, except in the situation where the state waters sub-component caused the overage. Northern windowpane is still not allocated to any non-groundfish fishery, so the groundfish fishery would continue to be held 100-percent accountable for any overages of the northern windowpane catch limit, regardless of what fishery caused the overage.

10. Annual Measures for FY 2014 Under Regional Administrator Authority

The Groundfish FMP gives us authority to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This proposed rule includes a description of these management measures that are being considered for FY 2014 in order to provide an opportunity for the public to comment on whether the proposed measures are appropriate. These measures are not part of Framework 51, and were not specifically proposed by the Council, but are proposed in conjunction with Framework 51 for expediency purposes, and because they relate to the proposed catch limits in Framework 51.

Table 9 provides a summary of the default trip limits that would take effect in FY 2014 if we took no action, the current common pool trip limits for FY 2013, and the proposed trip limits that would be in effect for the start of FY 2014. Table 10 provides a summary of the proposed FY 2014 cod trip limits for vessels fishing with a Handgear A, Handgear B, or Small Vessel Category permit. Proposed trip limits for FY 2014 were developed after considering changes to the FY 2014 common pool sub-ACLs and sector rosters, trimester TACs for FY 2014, catch rates of each stock during FY 2013, and other available information.

The default cod trip limit is 300 lb (136.1 kg) per trip for Handgear A vessels. If the GOM or GB cod trip limit for vessels fishing on a groundfish DAS drops below 300 lb (136.1 kg), then the respective Handgear A cod trip limit must be adjusted to be the same. This action proposes a GOM cod trip limit of 200 lb (90.7 kg) per DAS for vessels fishing on a groundfish DAS, so the proposed Handgear A trip limit for GOM cod is reduced to 200 lb (90.7 kg) per trip, accordingly.

The regulations also require that the Handgear B vessel trip limit for GOM and GB cod be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)) to the default cod trip limits applicable to DAS vessels. The FY 2014 GOM cod trip limit proposed in this action for DAS vessels (200 lb (90.7 kg) per DAS) is 75 percent lower than the default trip limit in the regulations. As a result, the proposed Handgear B vessel trip limit for GOM cod is reduced proportionally to 25 lb (11.3 kg) per trip.

Vessels with a Small Vessel category permit can possess up to 300 lb (136.1 kg) of cod, haddock, and yellowtail, combined, per trip. For FY 2014, we are proposing that the maximum amount of cod and haddock (within the 300-lb (136.1-kg) trip limit) be adjusted proportionally to the trip limits applicable to NE multispecies DAS vessels (see Table 9).

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Table 9—Proposed FY 2014 Common Pool Trip Limits

Stock	Default Trip Limit in Regulations	Current FY 2013 Trip Limit	Proposed FY 2014 Trip Limit
GB Cod	2,000 lb (907.2 kg)/DAS, up to 20,000 lb (9,072 kg)/trip		
GOM Cod	800 lb (362.9 kg)/DAS, up to 4,000 lb (1,814.3 kg)/trip	650 lb (294.8 kg)/DAS, up to 2,000 lb (907.2 kg)/trip	200 lb (90.7 kg)/DAS, up to 600 lb (272.2 kg)/trip
GB Haddock	Unlimited	10,000 lb (4,535.9 kg)/trip	
GOM Haddock	Unlimited	0 lb/trip	
GB Yellowtail Flounder	Unlimited	100 lb (45.4 kg)/trip	
SNE/MA Yellowtail Flounder	250 lb (113.4 kg)/DAS, up to 1,500 (680.4 kg)/trip	2,000 lb (907.2 kg)/DAS, up to 6,000 lb (2,721.6 kg)/trip	
CC/GOM Yellowtail Flounder	250 lb (113.4 kg)/DAS, up to 1,500 lb (680.4 kg)/trip	2,000 lb (907.2 kg)/trip	1,000 lb (453.6 kg)/trip
American plaice	Unlimited		
Witch Flounder	Unlimited	500 lb (226.8 kg)/trip	
GB Winter Flounder	Unlimited	1,000 lb (453.6 kg)/trip	
GOM Winter Flounder	Unlimited	2,000 lb (907.2 kg)/trip	1,000 lb (453.6 kg) per trip
SNE/MA Winter Flounder	Unlimited	300 lb/trip	1,000 lb (453.6 kg)/DAS up to 2,000 lb (907.2 kg kg)/trip
Redfish	Unlimited		
White hake	500 lb (226.8 kg)/DAS, up to 2,000 lb (907.2 kg)/trip	1,000 lb (453.6 kg)/DAS, up to 3,000 lb (1,360.8 kg)/trip	1,000 lb (453.6 kg)/trip
Pollock	1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,535.9 kg)/trip	Unlimited	10,000 lb (4,535.9 kg) per trip
Atlantic Halibut	1 fish/trip		
Windowpane Flounder	Possession Prohibited		
Ocean Pout			
Atlantic Wolffish			

Table 10—Proposed FY 2014 Cod Trips Limits for Handgear A, Handgear B, and Small Vessel Category Permits

Permit	Default Cod Trip Limit	Proposed FY 2014 GOM Cod Trip Limit	Proposed FY 2014 GB Cod Trip Limit
Handgear A	300 lb (136.1 kg)/trip	200 lb (45.4 kg)/trip	300 lb (136.1 kg)/trip
Handgear B	75 lb (34.0 kg)/trip	25 lb (11.3 kg)/trip	75 lb (34.0 kg)/trip
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; Maximum of 75 lb (34.0 kg) of GOM cod and 0 lb of GOM haddock within the 300-lb combined trip limit		

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (70 FR 31323; June 1, 2005) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (or 2,250,000 lb (1,020,600 kg). This calculation accounts for the projected catch from the area outside the SAP. Based on the proposed GB yellowtail groundfish sub-ACL of 561,077 lb (254,500 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action proposes to allocate zero trips to the Closed Area II Yellowtail Flounder/

Haddock SAP for FY 2014. Vessels could still fish in this SAP in FY 2014 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels would not be allowed to fish in this SAP using flounder nets.

11. Regulatory Corrections Under Regional Administrator Authority

The following changes are being proposed to the regulations to correct references, inadvertent deletions, and other minor errors.

In § 648.80(g)(5)(i), this rule would correct the reference to the mesh obstruction or constriction definition.

In § 648.85(b)(6)(iv)(B), the observer call-in requirement under the B DAS program is corrected to 48 hr prior to the start of the trip, instead of 72 hr prior to the start of the trip. This change was inadvertently omitted during the Amendment 16 rulemaking.

This rule would remove § 648.87(b)(1)(i)(F) and (G). This regulatory text was added as part of NMFS's emergency rule for addressing sector carryover for FY 2013. This regulatory text was supposed to expire on April 30, 2014; however, was inadvertently left in the regulations permanently.

In § 648.87(c)(2), this rule would clarify that sector exemptions are limited to those regulations implementing the groundfish program, and not any regulation applicable to a groundfish vessel. The proposed regulatory correction more precisely reflects the intent of Amendment 16.

In § 648.90(a)(4), this rule would reinstate the regulatory text describing the ABC and ACL recommendation process, which was inadvertently deleted in a previous rulemaking.

In § 648.90(a)(5), this rule would reinstate the regulatory text describing the trigger of the scallop fishery accountability measures, which was inadvertently deleted in a previous rulemaking.

In § 697.7(c)(1)(xxii) and (c)(2)(xvii), this rule would replace the word ''traps'' with ''lobster traps.'' This proposed correction is intended to clarify that the lobster regulations do not prohibit Federal lobster permit holders from possessing, or using, non-lobster trap gear on trips fishing with a method other than traps (e.g., mobile trawl gear).

NMFS defines a lobster trap as ''any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters.'' This definition applies to all Federal lobster permit holders regardless of whether the permit holder might actually be targeting a different species with the trap (e.g., crab or fish traps). Federal lobster permit holders are prohibited from possessing, or using, lobster traps on any trip that catches lobster with non-trap gear (e.g., trawl gear). However, trap gear that is configured in such a way so that it is not capable of catching lobster is not considered ''lobster trap'' gear. As a result, Federal lobster permit holders are allowed to possess, and use, non-lobster trap gear on board their vessel even if harvesting lobster with gear other than lobster traps (e.g., trawl gear).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 51, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 51 and its accompanying EA/RIR/IRFA. The IRFA describes the economic impact that this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 51, the beginning of this section (**SUPPLEMENTARY INFORMATION**) in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Small Business Administration defines a small business as one that is:

- Independently owned and operated;
- not dominant in its field of operation;
- has annual receipts that do not exceed—
  - $19.0 million in the case of commercial finfish harvesting entities (NAIC[1] 114111)
  - $5.0 million in the case of commercial shellfish harvesting entities (NAIC 114112)
  - $7.0 million in the case of for-hire fishing entities (NAIC 114119); or
- has fewer than—
  - 500 employees in the case of fish processors
  - 100 employees in the case of fish dealers.

This proposed rule impacts commercial and recreational fish harvesting entities engaged in the groundfish limited access and open access fisheries, the small-mesh multispecies and squid fisheries, and the scallop fishery. A description of the specific permits that are likely to be impacted is included below for informational purposes, followed by a discussion of the impacted businesses (ownership entities), which can include multiple vessels and/or permit types. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

Limited Access Groundfish Fishery

The limited access groundfish fishery consists of those enrolled in the sector program and those in the common pool. As of January 14, 2014 (FY 2013), there were 1,088 individual limited access permits. For purposes of this analysis, groundfish limited access eligibilities held as Confirmation of Permit History are not included because, although they may generate revenue from quota leasing, they do not generate any gross sales from fishing activity, and thus, would not be classified as commercial fishing entities.

Of the 1,088 limited access groundfish permits issued in FY 2013, 664 of these permits were enrolled in the sector program, and 424 were in the common pool. Each of these permits will be eligible to join a sector or enroll in the common pool in FY 2014. Alternatively each permit owner could also allow their permit to expire by failing to renew it. Of the 1,088 limited access groundfish permits, 767 have landings of any species and 414 have some amount of groundfish landings.

Handgear B

The Handgear B permit is an open access groundfish permit that can be requested at any time, with the

[1] The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

limitation that a vessel cannot have a limited access and an open access Handgear B permit concurrently. There are no qualification criteria required for this permit. The Handgear B permit is a rod-and-reel handgear permit that must adhere to specified possession limits for groundfish species with special provisions for cod. The cod possession limit for Handgear B permits is set annually to 75 lb (34 kg) per trip, and is automatically adjusted relative to the GOM cod trip limit for limited access DAS vessels enrolled in the common pool fishery. The current possession limit is 75 lb (34 kg). As of February 18, 2014 (FY 2013), there were 891 Handgear B permits, and 78 of those vessels landed groundfish.

Charter/Party Fishery

The charter/party permit is an open access groundfish permit that can be requested at any time, with the limitation that a vessel cannot have a limited access and an open access party/charter permit concurrently. There are no qualification criteria required for this permit. Charter/party permits are issued as an open access permit (Category I) under the Groundfish Plan, and are subject to recreational management measures. As of February 20, 2014 (FY 2013), there were 667 party/charter permits issued; 383 of which reported taking a party or charter trip. Of these active party/charter vessels, 120 caught cod or haddock in the Gulf of Maine in FY 2013.

Limited Access Scallop Fisheries

The limited access scallop fisheries include Limited Access (LA) scallop permits and Limited Access General Category (LGC) scallop permits. LA scallop businesses are subject to a mixture of DAS and dedicated area trip restrictions. LGC scallop businesses are able to acquire and trade LGC scallop quota, and there is an annual cap on quota/landings. The proposed action would not alter the regulations for LGC permit holders. As of February 19, 2014 (FY 2013), there were 348 active LA scallop permits with at least one dollar of revenue from sea scallops.

Small-Mesh Fisheries

The small-mesh exempted fishery allows vessels to harvest species in designated areas using mesh sizes smaller than the minimum mesh size required by the Groundfish Plan. To participate in the small-mesh multispecies (whiting) fishery, vessels must hold either a limited access multispecies permit or an open access multispecies permit (category K). Limited access multispecies permit holders can only target whiting when not fishing under a DAS, and while declared out of the fishery. A description of limited access multispecies permits was provided above. As of February 18, 2014 (FY 2013), there were 776 open access category K multispecies permits issued, with only 34 of them landing whiting. Many of these vessels target both whiting and longfin squid on small-mesh trips taken in the GB yellowtail flounder stock area, and therefore, most of them also have open access or limited access Squid, Mackerel, and Butterfish (SMB) permits. The GB yellowtail flounder stock area provided almost half of total whiting landings in CY 2010–2011. Since squid landings in the GB yellowtail flounder stock area comprised less than 10 percent of overall squid landings during the same time period, and since most SMB permitted vessels fishing in the GB yellowtail flounder stock area will also have a multispecies permit, SMB permits will not be handled separately in this analysis.

Ownership Entities

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common owners as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit application, those seven persons would form one ''ownership entity,'' that hold those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership data set is based on calendar year 2012 permits and contains average gross sales associated with those permits for calendar years 2010 through 2012. Matching the potentially impacted FY 2013 permits described above (limited access and open access groundfish, Handgear B, charter/party, and limited access scallop) to the calendar year 2012 ownership data results in 2,064 distinct ownership entities. Of these, and based on the Small Business Administration guidelines, 2,042 are categorized as small, and 22 are categorized as large entities, all of which are shellfish businesses.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries, and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50 percent of gross sales from sales of regulated species associated with a specific fishery, we are able to identify those ownership groups most likely to be impacted by the proposed regulations.

Using this threshold, 151 entities are groundfish-dependent, all of which are small, and all of which are finfish commercial harvesting businesses. Of the 151 groundfish-dependent entities, 130 have some level of participation in the sector program, and 21 operate exclusively in the common pool fishery. There are 234 regulated entities which are scallop-dependent. All of these are shellfish businesses, and 20 are considered large. There are 35 small-mesh fishery-dependent entities; 19 of them are finfish businesses, 16 of them are shellfish businesses, and all of them are considered small. The small-mesh fishery-dependent entities may overestimate the number of impacted entities since missing statistical area information in the commercial dealer database makes it difficult to track whiting and squid landings that occurred exclusively in the GB yellowtail flounder stock area.

Economic Impacts of the Proposed Measures and Alternatives and Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The economic impacts of each proposed measure are summarized below and are discussed in more detail in sections 7.4 and 8.11 of the Framework 51 EA. The outcome of ''significant economic impact'' can be ascertained by examining two factors: Disproportionality and profitability. Disproportionality refers to whether or not the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability refers to whether or not the regulations significantly

reduce profits for a substantial number of small entities.

The proposed action has the potential to place small entities at a significant competitive disadvantage relative to large entities. This is mainly because large entities likely have more flexibility to adjust to, and accommodate, the proposed measures. Impacts on profitability from the proposed action may be significant for a substantial number of small entities as described below.

Gulf of Maine Cod and American Plaice Rebuilding Strategies

The preferred alternatives to change the rebuilding strategies for GOM cod and American plaice (10-year rebuilding program) are expected to positively impact profitability of small entities regulated by this action. The rebuilding strategies being considered for both species are expected to result in higher Net Present Values (NPVs) for each stock compared to if no action was taken, which would translate into larger profits. The alternatives to the preferred alternative included the No Action alternative, an 8-year rebuilding program for GOM cod, and a 7 and 8-year rebuilding program for American plaice. The 10-year rebuilding plan for GOM cod is expected to have modest gains in NPV and profitability compared to the 8-year rebuilding plan. For American plaice, there is little discernible difference between the three rebuilding strategies considered. In addition, by adopting new rebuilding strategies for GOM cod and American plaice, the proposed action will help prevent severe economic loss that could occur under highly restrictive catch limits in FY 2015 that would occur if no action was taken, especially to groundfish-dependent small entities. Party/charter fishing businesses would also experience significant economic loss under the No Action option for GOM cod, but would be unaffected by the American plaice action because there is no directed recreational fishery for this stock, and no recreational allocation of American plaice.

Catch Limits

The preferred alternative to modify the ACLs and sub-ACLs for white hake, eastern GB cod and haddock, and GB yellowtail flounder has the potential to impact groundfish and scallop-dependent small entities, and is discussed in the next section. Recreational harvesting entities, as well as small-mesh fishery-dependent entities, do not target these stocks, and are not expected to be directly impacted by this proposed action. Based on the proposed catch limits, gross revenues for the groundfish industry are predicted to decrease in FY 2014 by 26 percent compared to FY 2012, and by 4 percent compared to FY 2013. Net revenue is predicted to decline by 21 percent in FY 2014 compared to FY 2012, and by 12 percent compared to predicted net revenues for FY 2013. The negative impacts of the revised ACLs would be non-uniformly distributed across vessel size classes, with smaller vessels being more heavily impacted compared to large vessels. Although small entities are defined based on gross sales of ownership groups, not physical characteristics of the vessel, it is reasonable to assume that larger vessels are more likely to be owned by large entities. As a result, the proposed ACLs could put small entities at a competitive disadvantage compared to large entities.

Under the No Action alternative, no catch limits would be specified for the U.S./Canada stocks or white hake. As a result, sector vessels would be unable to fish in the respective stock areas in FY 2014. This would result in greater negative economic impacts on vessels compared to the proposed action due to lost revenues as a result of being unable to fish. If no action was taken to specify catch limits for these stocks, the Magnuson-Stevens Act requirements to achieve optimum yield and consider the needs of fishing communities would be violated.

If the scallop fishery triggers the GB yellowtail flounder accountability measures, the proposed ACLs for this stock would likely reduce scallop fishery revenues. How this reduction in revenue would compare to No Action is unclear. The No Action would not set a scallop fishery sub-ACL for GB yellowtail flounder. If no sub-ACL was set, this would not prevent the scallop fishery from fishing in FY 2014. In addition, if no sub-ACL is set, catches in FY 2014 would likely not trigger an AM, which might allow for greater scallop fishery revenues. The proposed FY 2014 GB yellowtail flounder sub-ACL could create a competitive disadvantage within the scallop fishery if an AM is triggered as a result of an overage. Small entities would have less flexibility compared to large entities to adjust to the area closures that would result from an ACL overage.

The proposed catch limits are based on the latest stock assessment information, which is considered the best scientific information available, and the applicable requirements in the Groundfish Plan and the Magnuson-Stevens Act. Because NMFS can only approve or disapprove measures recommended in Framework 51, the only other possible alternatives to the catch limits proposed in this action that would mitigate negative impacts would be higher catch limits. Alternative, higher catch limits, however, are not permissible under the law because they would not be consistent with the goals and objectives of the Groundfish Plan, or the Magnuson-Stevens Act, particularly the requirement to prevent overfishing. The Magnuson-Stevens Act, and case law, prevent implementation of measures that conflict with conservation requirements, even if it means negative impacts are not mitigated. The catch limits proposed in this action are the highest allowed given the best scientific information available, the SSC's recommendations, and requirements to end overfishing and rebuild fish stocks. The only other catch limits that would be legal would be lower than those proposed in this action, which would not mitigate the economic impacts of the proposed catch limits.

Small-Mesh Fisheries Accountability Measures

The preferred alternative to implement a GB yellowtail flounder accountability measure for small-mesh fisheries is expected to negatively impact small-mesh fishery-dependent small entities, and has the potential to create minor economic benefits for groundfish-dependent small entities. Under the preferred alternative, if the small-mesh fisheries sub-ACL for GB yellowtail flounder is exceeded, selective trawl gear would be required in the year immediately following the overage, or 2 years after the overage, depending on data availability. Small entities would likely experience higher costs as a result, including the fixed cost of purchasing new gear and/or modifying existing gear. These potential gear restrictions would also likely lower the catch rates of target species (e.g., squid and whiting), which would increase operating costs, and effectively lower net revenue and overall profitability. The negative impacts from the proposed action are expected to be lower than another alternative considered in Framework 51 that would have closed the entire GB yellowtail flounder stock area to small-mesh fisheries if the sub-ACL was exceeded. If the proposed accountability measure successfully reduces discards of GB yellowtail flounder, and prevents overfishing, catch rates for the species could increase for groundfish-dependent small entities, resulting in small increases in profitability.

Economic Impacts of Other Measures

Framework 51 also considered multiple alternatives that would modify U.S./Canada management measures to provide more flexibility for groundfish vessels. For each specific measure, no other alternatives were considered other than the No Action alternative and the proposed action.

The proposed U.S./Canada trading mechanism is not expected to have any additional economic impacts, positive or negative, relative to the No Action alternative, which would not specify any U.S./Canada trading mechanism. At this time, it is not known how the proposed action might increase or decrease quota allocated to groundfish fishermen because it is difficult to anticipate what, if any, trade would be made between the U.S. and Canada. However, if the ability to trade quota inseason were to result in increased quota for sector and/or common pool fishermen, and if that quota were to be converted into landings, then the proposed action would be beneficial to groundfish-dependent small entities.

The second proposed measure would modify the distribution of the eastern and western allocations of GB haddock and is expected to have small, but positive, impacts on groundfish-dependent small entities that participate in the sector program due to increased operational flexibility. Under the proposed action, sector vessels would be allowed to convert their eastern GB haddock allocation into western GB haddock allocation. This would likely increase flexibility for sector vessels, and prevent the western U.S./Canada Area from being closed to a sector prematurely, before the sector had harvested all of its GB haddock allocation. However, since catch of eastern and western GB haddock has been persistently lower than the respective catch limits, the benefit of the proposed action is likely very small.

The proposed action to revise the discard strata for GB yellowtail flounder is only expected to impact groundfish-dependent entities that participate in the sector program. If the discard rate decreases in area 522 as a result of the proposed action, vessels fishing in that area would be able to expend less GB yellowtail quota on each trip. This would likely allow more fishing, and would likely increase net revenues for vessels. The proposed action is expected to have the largest effect on trawl vessels, since these vessels catch the majority of the GB yellowtail flounder catch. The proposed revision to the GB yellowtail flounder discard strata could potentially result in a higher discard rate for the other areas (525, 561, and 562). This would potentially decrease net revenues to vessels fishing in those areas, because the opportunity cost of quota would likely increase.

Finally, the proposed prohibition on possession of yellowtail flounder by limited access scallop vessels is expected to impact only scallop-dependent small entities. If scallop vessels are prohibited from retaining and landing yellowtail flounder, there could be some economic loss for vessels that have been landing the species. Only a relatively small proportion (less than a quarter) of the active limited access vessels are currently landing yellowtail flounder, and the average revenue per vessel from yellowtail flounder is less than 5 percent of the average total revenue. As such, the effects of the proposed action on the profitability of scallop-dependent small entities are expected to be small.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed action contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

This action proposes to adjust the ACE transfer request requirement implemented through Amendment 16. This rule would add a new entry field to the Annual Catch Entitlement (ACE) transfer request form to allow a sector to indicate how many pounds of eastern GB haddock ACE it intends to re-allocate to the Western U.S./Canada Area. This change is necessary to allow a sector to apply for a re-allocation of eastern GB ACE in order to increase fishing opportunities in the Western U.S./Canada Area. Currently, all sectors use the ACE transfer request form to initiate ACE transfers with other sectors via an online or paper form to the Regional Administrator. The proposed change adds a single field to this form, and would not affect the number of entities required to comply with this requirement. Therefore, the proposed change would not be expected to increase the time or cost burden associated with the ACE transfer request requirement. Public reporting burden for this requirement includes 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.

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

50 CFR Part 697

Fisheries, Fishing.

Dated: March 11, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR parts 648 and 697 are proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 1a. In § 648.14, revise paragraph (i)(2)(iii)(D) to read as follows:

§ 648.14. Prohibitions.

* * * * *

(i) * * *

(2) * * *

(iii) * * *

(D) Fish for, possess, or land yellowtail flounder from a vessel on a scallop fishing trip.

* * * * *

■ 2. In § 648.60, revise paragraph (a)(5)(ii)(C) to read as follows:

§ 648.60. Sea scallop access area program requirements.

(a) * * *

(5) * * *

(ii) * * *

(C) *Yellowtail flounder.* Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

* * * * *

■ 3. In § 648.80, revise paragraph (g)(5)(i) to read as follows:

§ 648.80. NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(g) * * *

(5) * * *

(i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully

fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(c).

* * * * *

■ 4. In § 648.85, revise paragraphs (a)(2)(ii) and (b)(6)(iv)(B) and add paragraph (a)(2)(iv) to read as follows:

§ 648.85. Special management programs.

(a) * * *

(2) * * *

(ii) *TAC Overages.* Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage in the following fishing year and may be subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

* * * * *

(iv) *Inseason TAC Adjustments.* For FY 2014 only, the Regional Administrator, in consultation with the Council, may adjust the FY 2014 TACs for the U.S./Canada shared resources inseason consistent with any quota trade recommendations made by the TMGC and/or Steering Committee, and approved by the Regional Administrator. Any such inseason adjustment to the FY 2014 TACs may only increase the TAC available to the U.S. fishery, and may not reduce the TAC amount distributed in FY 2014 to any fishery component as specified in paragraph (a)(2)(iii) of this section. The revised FY 2014 TAC(s) shall be distributed consistent with the process specified in paragraph (a)(2)(iii) of this section. For example, if the U.S. receives additional yellowtail flounder TAC in FY 2014, and trades away a portion of its FY 2015 haddock TAC, the Regional Administrator would increase the FY 2014 U.S. TAC for yellowtail flounder inseason consistent with the process specified in this paragraph (a)(2)(iv). The adjustment to the FY 2015 U.S. TAC for haddock would be made as part of the process for establishing TACs, as described in paragraph (a)(2)(i)(C) of this section.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 48 hr prior to the beginning of any trip declared into the Regular B DAS Program as required by paragraph (b)(6)(iv)(C) of this section, and in accordance with the Regional Administrator's instructions. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity on that trip to that area only (*i.e.,* the vessel operator may change his/her plans regarding planned fishing areas).

* * * * *

■ 5. In § 648.87:

■ a. Revise paragraphs (b)(1)(i)(B), (b)(1)(v)(A), and (c)(2);

■ b. Add paragraph (e)(3)(iv); and

■ c. Remove paragraphs (b)(1)(i)(F) through (G) to read as follows:

§ 648.87. Sector allocation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) *Eastern GB stocks—(1) Allocation.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(*2*) *Re-allocation of haddock ACE.* A sector may re-allocate all, or a portion, of a its haddock ACE specified to the Eastern U.S./Canada Area, pursuant to paragraph (b)(1)(i)(B)(*1*) of this section, to the Western U.S./Canada Area at any time during the fishing year, and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. Re-allocation of any ACE only becomes effective upon approval by NMFS, as specified in paragraphs (b)(1)(i)(B)(*2*)(*i*) through (*iii*) of this section. Re-allocation of haddock ACE may only be made within a sector, and not between sectors. For example, if 100 mt of a sector's GB haddock ACE is specified to the Eastern U.S./Canada Area, the sector could re-allocate up to 100 mt of that ACE to the Western U.S./Canada Area.

(*i*) *Application to re-allocate ACE.* GB haddock ACE specified to the Eastern U.S./Canada Area may be re-allocated to the Western U.S./Canada Area through written request to the Regional Administrator. This request must include the name of the sector, the amount of ACE to be re-allocated, and the fishing year in which the ACE re-allocation applies, as instructed by the Regional Administrator.

(*ii*) *Approval of request to re-allocate ACE.* NMFS shall approve or disapprove a request to re-allocate GB haddock ACE provided the sector, and its participating vessels, is in compliance with the reporting requirements specified in this part. The Regional Administrator shall inform the sector in writing, within 2 weeks of the receipt of the sector's request, whether the request to re-allocate ACE has been approved.

(*iii*) *Duration of ACE re-allocation.* GB haddock ACE that has been re-allocated to the Western U.S./Canada Area pursuant to this paragraph (b)(1)(i)(B)(*2*) is only valid for the fishing year in which the re-allocation is approved, with the exception of any requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

* * * * *

(v) * * *

(A) *Discards*

(*1*) A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(*2*) *GB yellowtail flounder discards.* For the purpose of counting discards of GB yellowtail flounder against a sector's ACE pursuant to paragraph (b)(1)(v)(A)(*1*) of this section, GB yellowtail flounder discards shall be calculated for the following two GB areas for each gear type, unless otherwise specified in this paragraph: Statistical area 522, by itself, and statistical areas 525, 561, and 562 combined. This provision does not change the methods used to estimate discards of other groundfish stocks. If the Regional Administrator determines this finer stratification of GB yellowtail flounder discards is only appropriate for trawl gear, then the Regional Administrator may exclude other, non-trawl gears from this stratification method in a manner consistent with the Administrative Procedure Act.

* * * * *

(c) * * *

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation implementing the NE multispecies FMP, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

* * * * *

(e) * * *

(3) * * *

(iv) *Re-allocation of GB haddock ACE.* Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, a state-operated permit bank may re-allocate all, or a portion, of its GB haddock ACE specified for the Eastern U.S./Canada Area to the Western U.S./Canada Area provided it complies with the requirements in paragraph (b)(1)(i)(B)(*2*) of this section.

* * * * *

■ 6. In § 648.90:

■ a. Revise paragraphs (a)(2)(iv) through (vii), (a)(4)(i), and (a)(4)(iii)(G); and

■ b. Add paragraphs (a)(2)(viii), (a)(5)(iv), and (a)(5)(v) to read as follows:

§ 648.90. NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) * * *

(iv) *Rebuilding plan review for GOM cod and American plaice.* Based on this review of the most current scientific information available, the PDT shall determine whether the following conditions are met for either stock: The total catch limit has not been exceeded during the rebuilding program; new scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and $F_{rebuild}$ becomes less than 75% F_{MSY}. If all three of these criteria are met, the PDT, and/or SSC, shall undertake a rebuilding plan review to provide new catch advice that includes the following, in priority order: Consideration of extending the rebuilding program to the maximum 10 years if a shorter time period was initially adopted; review of the biomass reference points; and calculation of $F_{rebuild}$ ACLs based on an extension of the rebuilding program to 10 years, the review of the biomass reference points, and the existing rebuilding plan.

(v) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

(vi) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vii) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

(viii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the

Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

* * * * *

(4) * * *

(i) * * *

(A) *ABC recommendations.* The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommend by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

* * * * *

(iii) * * *

(G) *GB yellowtail flounder catch by small mesh fisheries*—(*1*) For the purposes of this paragraph, the term ''small-mesh fisheries'' is defined as vessels fishing with bottom tending mobile gear with a codend mesh size of less than 5 in (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3).

(*2*) Small-mesh fisheries allocation. GB yellowtail flounder catch by the small-mesh fisheries, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(5) * * *

(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether the overall ACL for each stock allocated to the scallop fishery has been exceeded. When evaluating whether the overall ACL has been exceeded, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock. If catch by scallop vessels exceeds the pertinent sub-ACL specified in paragraph (a)(4)(iii)(C) of this section by 50 percent or more, or if scallop catch exceeds the scallop fishery sub-ACL and the overall ACL for that stock is also exceeded, then the applicable scallop fishery AM shall take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H):, A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedures Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

* * * * *

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 7. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 8. In § 697.7, revise paragraphs (c)(1)(xxii) and (c)(2)(xvii) to read as follows:

§ 697.7. Prohibitions.

* * * * *

(c) * * *

(1) * * *

(xxii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any lobster trap gear, on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than lobster traps.

* * * * *

(2) * * *

(xvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any lobster trap gear on a fishing trip in the EEZ on a vessel that fishes

for, takes, catches, or harvests lobster by a method other than lobster traps.

* * * * *

[FR Doc. 2014–05779 Filed 3–14–14; 8:45 am]

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